ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2004

Ms. Rebecca Brewer
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2004-5973

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 208333.

The Frisco Police Department (the "department"), which you represent, received a request for information pertaining to a particular incident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information other statutes make confidential. Section 261.201(a) of the Family Code provides as follows:

> (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
>
> > (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

> (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Chapter 261 governs investigations of reports of child abuse or neglect. The submitted report does not involve an investigation of suspected child abuse or neglect. Although you state that the "information requested was referred to Child Protective Services for a chapter 261 investigation," the department has not explained that the report was used by Child Protective Services in its investigation conducted under chapter 261. Thus, the department may not withhold the report under section 261.201.

We note, however, that the submitted information includes social security numbers. Section 552.101 also encompasses the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the department should ensure that such information is not obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. However, because the laws regarding the confidentiality of social security numbers are intended to protect individuals' privacy, the requestor's social security number may not be withheld from him on the basis of the federal law. *See* Gov't Code § 552.023(b) (governmental body may not deny access to information to person, or person's representative, to whom information relates on grounds that information is considered confidential by privacy principles).

The submitted records also include Texas-issued motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." The exception in section 552.130 is based on privacy principles. Therefore, the requestor is entitled to his own driver's license information and information that pertains to any vehicle in which he owns an interest. *See* Gov't Code § 552.023(b). However, the Texas driver's license information of other individuals and information pertaining to vehicles in which the requestor does not own an interest must be withheld pursuant to section 552.130.

In summary, social security numbers of individuals other than the requestor may be confidential under federal law. Pursuant to section 552.130, the department must withhold

the Texas driver's license information of other individuals and information pertaining to vehicles in which the requestor does not own an interest. The remaining submitted information must be released to this requestor.[1]

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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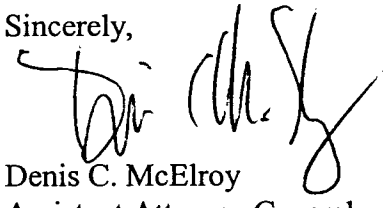
[1]Because the records being released contain information relating to the requestor that may be excepted from disclosure to the general public under laws and exceptions designed to protect privacy, if the department receives another request for this information from someone other than this requestor or his authorized representative, the department should again seek our decision.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 208333

Enc. Submitted documents

c: Mr. Jim Rohwer
34311 La Grange Drive
Frisco, Texas 75035
(w/o enclosures)