



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2005

Mr. Galen Gatten
Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR2005-02730

Dear Mr. Gatten:

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# 221098.

The Midland Police Department (the "department") received a request for information relating to an incident involving two named individuals. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. Social security numbers and related records are excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act if a state agency or political subdivision of the state obtained or maintains the social security number information under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 (1994). You contend that the submitted social security numbers fall under the federal statute because they were obtained pursuant to section 411.086 of the Government Code. This section contemplates rules that the Department of Public Safety (the "DPS") shall adopt with regard to requests for criminal history record information ("CHRI"). Section 411.086 provides in part that such rules "may require a person requesting [CHRI] about an individual to submit to the [DPS] . . . any

known identifying number of the individual, including [a] social security number[.]” Gov’t Code § 411.086(b)(2).

Although you state that “[t]he collection of social security numbers by police officers helps establish identities of criminals,” you do not specifically state whether the department obtained or maintains the submitted social security numbers to request CHRI from the DPS. Moreover, you do not inform us whether the DPS actually requires or required the department to submit these particular social security numbers in order to request CHRI. However, if the department obtained or maintains these social security numbers in order to request CHRI from the DPS, and if the DPS actually requires or required the department to submit these social security numbers with a request for CHRI, then the submitted social security numbers are confidential under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We note, however, that one of the submitted social security numbers belongs to the requestor. The requestor has a special right of access to his own social security number. *See* Gov’t Code § 552.023.¹ Information to which the requestor has a right of access under section 552.023 may not be withheld from him on the basis of section 405(c)(2)(C)(viii)(I) of the federal law, which protects privacy interests. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when requestor seeks information concerning himself).

Next, we address section 552.130. This section excepts information that relates to

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov’t Code § 552.130(a)(1)-(2). Texas driver’s license and motor vehicle information must be withheld from the public under this exception. In this instance, however, the submitted Texas driver’s license number also belongs to the requestor. Likewise, the requestor appears to be the owner of the vehicle to which the submitted vehicle information relates. Because section 552.130 also protects privacy interests, the requestor has a right of access to his own Texas driver’s license information and to information relating to a vehicle in which he owns an interest.² Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987). Therefore,

¹Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023.

²We note that the department may require a requestor to provide additional identifying information sufficient to enable the department to determine whether the requestor is eligible to receive motor vehicle record information under chapter 730 of the Transportation Code. *See* Gov’t Code § 552.222(c).

the requestor's own Texas driver's license and motor vehicle information may not be withheld from him under section 552.130.

In summary, if the department obtained or maintains the submitted social security numbers in order to request CHRI from the DPS, and if the DPS actually requires or required the department to submit these social security numbers with a request for CHRI, then the submitted social security numbers are confidential under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. However, the requestor has a right of access to his own social security number. The requestor also has a right of access to his own Texas driver's license number and to information relating to a motor vehicle in which he owns an interest. The rest of the submitted information is not excepted from disclosure and must also be released.

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).

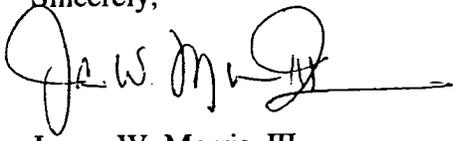
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/krl

Ref: ID# 221098

Enc: Submitted documents

c: Mr. Lee Mayfield
2018 East 28th Street
Lubbock, Texas 79404
(w/o enclosures)