



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2007

Mr. John Ohnemiller
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2007-15605

Dear Mr. Ohnemiller:

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# 299905.

The City of Midland (the "city") received a request for information relating to a fatal industrial accident. 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 reviewed the submitted information.

We first note that the city did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Thus, because the city did not request this decision within the ten-business-day period prescribed by section 552.301(b), the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos.* 630 at 3 (1994), 325 at 2 (1982). Because your claims under sections 552.101

and 552.130 of the Government Code can provide compelling reasons for non-disclosure, we will address those exceptions.

Section 552.101 excepts from 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 other statutes make confidential. Social security numbers and related records are excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). You claim that the social security numbers contained in the submitted documents falls under the federal Social Security Act because they were obtained pursuant to section 411.086 of the Government Code. That provision contemplates rules that the Texas Department of Public Safety (the “DPS”) shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules “may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number”

Although you state that the collection of social security numbers “by police officers helps establish identities of criminals,” you do not specifically state whether the police department obtained or maintained the social security numbers at issue in order to request criminal history information from the DPS. Moreover, you do not inform us whether the DPS actually requires or required the police department to submit the social security numbers in order to request criminal history information. Therefore, we conclude that if the police department obtained or maintains these social security numbers in order to request criminal history information from the DPS, and if the DPS actually requires or required the department to submit the social security numbers with its request for criminal history information, then the social security numbers are confidential under section 411.086 of the Government Code in conjunction with federal law.¹

Section 552.130 excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1). Except for the accident victim’s Texas driver’s license information, we agree that the city must withhold the Texas driver’s license numbers that appear in the submitted documents under section 552.130. Because this exception protects privacy, which is a personal right that lapses at death, the victim’s Texas driver’s license information may not be withheld under section 552.130. *See* Open Records Decision No. 272 at 1 (1981).

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary: (1) the social security numbers are confidential under section 411.086 of the Government Code in conjunction with federal law if the police department obtained or maintains the social security numbers in order to request criminal history information from the DPS and if the DPS actually requires or required the department to submit the social security numbers with its request for criminal history information; and (2) except for the victim's Texas driver's license information, the city must withhold the Texas driver's license numbers under section 552.130 of the Government Code. The rest of the submitted information must 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).

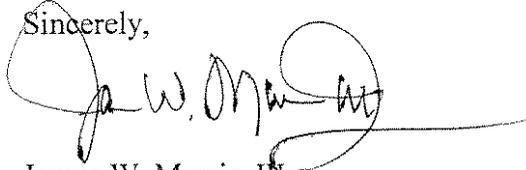
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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 "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

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

JWM/ma

Ref: ID# 299905

Enc: Submitted documents

c: Mr. Billy R. Wolfe
Wolfe & Associates
P.O. Box 2742
Lubbock, Texas 79408
(w/o enclosures)