



May 11, 2000

Mr. Tommy W. Lueders
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-1835

Dear Mr. Lueders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135072.

The City of Midland (the "city") received a request for a police incident report and a related toxicology report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.115 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

First, we address your contention that a related death certificate, Exhibit C, is excepted from required public disclosure. We question your assumption that the requestor seeks a copy of the death certificate. The requestor did not include the death certificate as a request item, and the requestor enclosed a copy of the death certificate with her letter to the city, presumably to aid the city in locating the information actually requested. However, because you maintain that the death certificate is responsive to the request and that it is excepted from required public disclosure, we address your arguments for withholding the death certificate.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 incorporates common law privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Notably, however, common law privacy

¹As you make no mention of the toxicology report, we assume that the city intends to release it to the requestor.

protection lapses upon the death of the subject. Open Records Decision No. 272 (1981). Therefore, none of the information contained in the death certificate is confidential under common law privacy as encompassed by section 552.101.

Birth or death records held by the bureau of vital statistics or local registration officials are excepted from required public disclosure under section 552.115 of the Government Code. However, since the death certificate in this case is not held by the bureau of vital statistics or local registration officials, section 552.115 is inapplicable. Accordingly, the city may not withhold the death certificate under either section 552.101 or section 552.115. Therefore, the city must release the death certificate to the requestor.

Next, we turn to the incident report, Exhibit B, and note that the report appears to be the subject of Open Records Letter No. 99-2974 (1999). A governmental body is not required to seek a determination from this office regarding the disclosure of information if the governmental body has previously requested and received a determination from this office concerning precisely the same information. Gov't Code § 552.301(a). If the submitted incident report is identical to information this office previously found to be excepted from required disclosure in Open Records Letter No. 99-2974, then, except for the front-page information, the report remains excepted from required disclosure and may be withheld, provided that there have been no substantive changes in circumstances or law that would require us to reexamine the information. *See* Open Records No. 638 at 3-4 (1996) (discussing change of circumstances in regard to pending or anticipated litigation).

To the extent the submitted report may contain additional information compared to the one previously considered by this office, we now examine your argument for withholding the report under section 552.108(a)(2). Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov't Code § 552.108(a)(2). This provision only applies to a criminal case that has concluded and that did not result in conviction or deferred adjudication. *Id.*

You imply and the submitted report itself indicates that the report pertains to a criminal matter that is closed. Moreover, you state that the report pertains to a criminal investigation “that did not result in conviction or deferred adjudication.” Based on your representation and our review of the submitted report, we conclude that the report pertains to a criminal investigation that has concluded and that did not result in a conviction or deferred adjudication. Accordingly, we find that the submitted report is subject to section 552.108(a)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city must release the type of information that is considered to be front page offense report information to the extent that it appears in the submitted report. Accordingly, with the exception of the basic front page offense report information, the city may withhold the report from disclosure based on section 552.108(a)(2). Although section 552.108(a)(2) authorizes the city to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.²

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

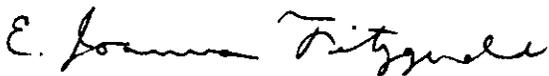
²As section 552.108 is dispositive in regard to the submitted report, we do not address your arguments concerning section 552.101 or 552.130 as they pertain to the report, except to note that front page information is not protected by section 552.101, and does not include the types of motor vehicle information that is confidential under section 552.130.

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 135072

Encl: Submitted documents

cc: Pat Bruce
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(w/o enclosures)