



April 15, 2002

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2002-1874

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161236.

The Texas Department of Public Safety (the "department") received a request for information relating to the department's investigation into a shooting death. You indicate that the department has released some of the information responsive to this request. However, you claim that the remainder of 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This office has previously held that certain portions of custodial death reports submitted to the Attorney General pursuant to article 49.18 of the Code of Criminal Procedure are confidential. Open Records Decision No. 521 at 5 (1989). Likewise, documents compiled and attached to custodial death reports as attachments must be withheld. *Id.* at 7. You contend that the submitted investigative documents are confidential under article 49.18 because the Gillespie County Sheriff's Department attached the material to its custodial death report submitted to the Attorney General. However, a document is not confidential under article 49.18 simply because the document is also attached to a custodial death report submitted to the Attorney General. *Id.* Indeed, when "a governmental body receives a request for information maintained as part of its ordinary responsibilities, the documents may be withheld only if one of the [Public Information Act's] exceptions or another specific law protects them." *Id.* Here, the requestor asks for information relating to the department's investigation, not the

custodial death report created by the Gillespie County Sheriff's Department. Since the submitted information appears to have been collected by the department as part of its ordinary responsibilities, we conclude that the information is not protected from disclosure under article 49.18. *Id.*

Furthermore, we note that the submitted information contains search warrant affidavits that are expressly open to the public. A search warrant affidavit is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). Therefore, the department must release the search warrant affidavits contained in the submitted information in their entirety.

Next, we note that some of the submitted information is confidential under common-law privacy. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have marked the information that is confidential under common-law privacy and must be withheld under section 552.101 of the Government Code.

The submitted documents also contain information that is protected from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information 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[.]

You have already redacted driver's license numbers, license plate numbers, and vehicle identification numbers, presumably pursuant to section 552.130 and our previous determination in Open Records Decision No. 2001-2047. However, a portion of the information you have redacted consists of the driver's license number, vehicle identification number, and license plate number of a deceased individual. Section 552.130 is designed to protect the privacy interests of third parties. Because privacy interests expire upon death, the

driver's license number, license plate number, and vehicle identification number of a deceased individual are not excepted from disclosure under section 552.130 of the Government Code. *See* Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, while you must generally withhold the Texas driver's license numbers, license plate numbers, and vehicle identification numbers contained in the submitted information under section 552.130, you must release the information pertaining to the deceased individual.

Likewise, the submitted documents contain information that is protected from disclosure under section 552.117 of the Government Code. Section 552.117(2) provides:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

...

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

Thus, the department must withhold those portions of the submitted documents that reveal a licensed peace officer's home address, home telephone number, social security number, and family member information. *See* Open Records Decision No. 670 at 5-6 (2001) (A governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies"). You have already redacted some of the personal information excepted under section 552.117(2). We have marked additional information in the submitted documents that must be withheld under section 552.117(2).

Finally, we note that you redacted the social security number, DPS number, and address of the deceased individual. A social security number may be confidential 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 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 at 2-4 (1994). However, because this federal provision is intended to protect the privacy interests of individuals, this provision does not encompass the social security number of a deceased individual. *See* Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Thus, you must release the

deceased individual's social security number. Furthermore, beyond your argument under article 49.18 of the Code of Criminal Procedure, you do not specifically argue, nor is it apparent, why the deceased's DPS number and address are excepted from disclosure. Consequently, we find that you must also release the DPS number and address of the deceased.

In summary, the department must withhold a portion of the submitted information that we have marked under section 552.101 of the Government Code and common-law privacy. The department must also withhold the Texas driver's license numbers, license plate numbers, and vehicle identification numbers contained in the submitted documents, except for the driver's license number, license plate numbers, and vehicle identification numbers belonging to the deceased individual, pursuant to section 552.130 of the Government Code. Finally, the department must withhold peace officers' home addresses and telephone numbers, social security numbers, and family member information under section 552.117(2) of the Government Code. The department must release the remainder of the submitted information.

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); *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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 161236

Enc: Submitted documents

c: Mr. Jonathan Yedor  
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San Antonio, Texas 78232  
(w/o enclosures)