



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 30, 2003

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

OR2003-2897

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# 180374.

The Texas Department of Public Safety (the "department") received a request for all records pertaining to driver's license information on a named individual. You claim that the requested information is excepted from disclosure under section 552.130 of the Government Code in conjunction with chapter 730 of the Transportation Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

...

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Generally, under section 552.130 of the Government Code, the department would be permitted to release information relating to a Texas driver's license *only* if such release is authorized by chapter 730 of the Transportation Code.

Section 730.004 of the Transportation Code provides:

Notwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005 – 730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

Transp. Code § 730.003(1), (4). Section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See* Transp. Code § 730.004. We believe that the department compiles or maintains motor vehicle records and, therefore, section 730.004 applies to the department. Furthermore, none of the exceptions for required or permitted disclosure under chapter 730 of the Transportation Code applies. *See* Transp. Code §§ 730.005 – .007. Accordingly, the requested information generally may be withheld under section 552.130 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

We note, however, that the purpose of chapter 730 of the Transportation Code is "to protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. Likewise, section 552.130 of the

Government Code is designed to protect the privacy interests of individuals. The bill which added section 552.130 to the Government Code also enacted chapter 730 of the Transportation Code. Act of May 29, 1997, S.B. 1069, 75th Leg., R.S. Consequently, chapter 730 and section 552.130 do not apply to the driver's license information of an individual who is deceased. See Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); see Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). You state that you have been informed that the named person whose records are at issue is deceased. Therefore, because that individual no longer has a right of privacy, we conclude that the department must release the submitted documents.

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).

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 180374

Enc. Submitted documents

c: Mr. Grant H. Jack
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(w/o enclosures)