ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2003

Mr. Thomas H. Arnold
City Attorney
City of Texarkana
P.O. Box 1967
Texarkana, Texas 75504

OR2003-7632

Dear Mr. Arnold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189916.

The Texarkana Police Department (the "department") received a request for four categories of information relating to the requestor's client and another named individual, and to a specified address. You advise that the department has no information responsive to the first item of the request. *See Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dism'd) (governmental body need not create new information in response to request or release information that does not exist at time request is received). You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We must first address the department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) of the Public Information Act (the "Act") provide:

> (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

> (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You state that the request for information was received on August 1, 2003. Therefore, the department had until ten business days following its receipt of that request to request a decision from this office regarding the requested information. Your request for a decision was postmarked August 18, 2003. Thus, the department failed to request a decision from this office in accordance with the ten business day deadline as required under section 552.301.

Under section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). Section 552.108, which protects law enforcement interests, is a discretionary exception and generally does not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 522 at 4 (1989) (discretionary exceptions in general). *But see* Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991) (need of *another* governmental body to withhold information under predecessor to section 552.108 can provide a compelling reason under section 552.302). Thus, the department may not withhold any information under section 552.108. However, the application of section 552.101 provides a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Included among the submitted documents is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more

pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b).

Section 552.101 also 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. *Indus. Found. v. Tex. Indus. Accident Bd.,* 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied,* 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press,* 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). In this instance, the requestor seeks in part all reports and police contact pertaining to two named individuals. Thus, the request requires the department to compile information regarding the named individuals. Based on the reasoning set out in *Reporters Committee,* such a compilation would ordinarily implicate these individuals' privacy rights to the extent that it includes arrests and investigations where one or more of the individuals is a suspect, arrestee, or defendant in a case. However, section 552.023 states that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interests. *See* Gov't Code § 552.023. Accordingly, to the extent that the department maintains responsive criminal history information that reveals that the requestor's client is a suspect, arrestee, or defendant in a case, the department must release this information to the requestor.[1] Furthermore, you state and the submitted documents reflect that the other individual named in the request is now deceased. Because the privacy rights of an individual lapse upon death, we conclude that the department may not withhold any compiled criminal history information that relates to the deceased individual. *See 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) (protection afforded by provision enacted to protect privacy of an individual extinguishes upon individual's death). Based on the same reasoning, the department may not withhold the driver's license, motor vehicle, fingerprint, or social security information of the deceased individual.

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[1] Likewise, pursuant to section 552.023, the requestor has a special right of access to her client's driver's license and fingerprint information, as well as to any social security information pertaining to her that would otherwise be confidential. To the extent that this information is confidential with respect to the general public, the department should again seek a decision from this office if it receives a future request for this information from an individual other than the requestor or her client.

In summary, we have marked an accident report that must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The remaining 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).

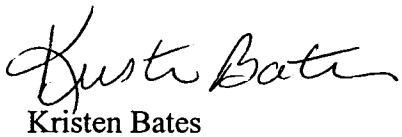
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 189916

Enc. Submitted documents

c: Ms. Winonia Griffin
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(w/o enclosures)