ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2003

Mr. Ed C. Jones
County Attorney
Angelina County
P.O. Box 1845
Lufkin, Texas 75902-1845

OR2003-9265

Dear Mr. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193243.

Angelina County received a request for 40 categories of information related to a shooting that occurred on July 3, 2003. You state that you "have construed the request to include the Angelina County Sheriff's Office [(the "sheriff's office")], which would be the only county office that has any documents that would be responsive to [the] request." The County Attorney of Angelina County ("county attorney") has submitted briefing on behalf of the sheriff's office. You state that some of the requested information has been furnished to the requestors. You also state that some of the requested information does not exist. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.–San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the present request asks the sheriff's office to answer several fact questions. In responding to a request for information under chapter 552 of the Government Code, a governmental body is not required to answer factual questions, conduct legal research, or create new information that did not exist at the time of the request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body

is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We therefore assume that the sheriff's office has made a good-faith effort to locate any information that would be responsive to the requestor's questions in the present request.

We next note that you inform us, and provide supporting documentation showing, that you sought clarification from the requestor regarding the scope of the request and available responsive information. *See* Gov't Code § 552.222(b) (providing that governmental body should help requestor clarify request by advising requestor of types of information available). Specifically, we note that the county attorney has sought clarification with respect to the portions of the request for a demographic breakdown of employees and complaints against the sheriff's office. Based on our review of the submitted information, it does not appear that the county attorney had received clarification as of the date you requested a ruling from this office. Thus, the sheriff's office need not respond to these two portions of the request at this time. Should the requestor clarify these aspects of his request, the sheriff's office must seek a ruling from this office before withholding any responsive information from the requestor. *See also* Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification).

We also note that the submitted records include motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. This provision was enacted to protect the privacy of an individual, and therefore, the protection extinguishes upon the individual's death. This conclusion is consistent with prior decisions of this office, which held that exceptions of the Public Information Act (the "Act") that only protect a person's privacy interest do not survive the death of that person. *See* Attorney General Opinion H-917 (1976) (common-law privacy under sections 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (section 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (section 552.114 does not except student records after student's death). Thus, as privacy rights lapse upon an individual's death, the sheriff's office must withhold the license plate and vehicle identification numbers of the deceased's vehicle under section 552.130 only to the extent that a living person has an ownership interest in the vehicle. Otherwise, the sheriff's office must release this information to the requestor. We have marked the information subject to section 552.130.

We next note that the submitted information contains a custodial death report. In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the attorney general, section one of a custodial death report filed with this office is public information,

but sections two through five of the report, as well as attachments to the report, are confidential. *See* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Accordingly, the sheriff's office must release section one of the submitted custodial death report to the requestor. However, because sections two through five of the report and attachments thereto are deemed confidential under article 49.18(b), the sheriff's office must not release this information to the requestor.

We now address your claim under section 552.108 in relation to the remaining submitted information. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must sufficiently explain how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the information at issue pertains to an open and ongoing investigation. Based on your representation, we conclude that the release of the information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978).

Section 552.108 does not, however, except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" offense and arrest report information held to be public in *Houston Chronicle*. The sheriff's office must, therefore, release basic information, including a detailed description of the offense, whether or not the information actually appears on the front page of a police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by Houston Chronicle). The sheriff's office may withhold the remaining information at issue under section 552.108(a)(1).

In summary, the sheriff's office must withhold the license plate and vehicle identification numbers of the deceased's vehicle under section 552.130 only to the extent that a living person has an ownership interest in the vehicle. Otherwise, the sheriff's office must release this information to the requestor. The sheriff's office must release section one of the submitted custodial death report. Sections two through five of the report must be withheld under section 552.101 as information made confidential by law. With the exception of basic information, which must be released, the sheriff's office may withhold the remaining submitted information under section 552.108(a)(1).

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).

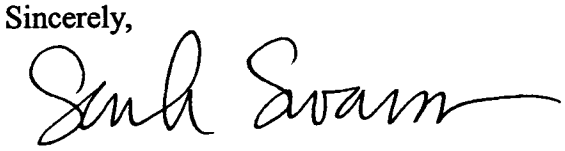
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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/seg

Ref: ID# 193243

Enc. Submitted documents

c: Mr. Oliver Brown
Ms. Wilma Spencer-White
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(w/o enclosures)