



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2004

Ms. Terri Isenberg
Rosenberg Police Department
2120 4th Street
Rosenberg, Texas 77471

OR2004-7844

Dear Ms. Isenberg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 208813.

The Rosenberg Police Department (the "department") received a request for a specific incident report. You state that the department has released some of the requested information. You claim that the remaining requested information, or portions thereof, 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 section encompasses information protected by other statutes. We note that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Fam. Code § 58.007(c). In addition, prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Former section 51.14(d) provided that "law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public[.]"¹ See Open Records Decision No. 644 at 2 (1996). Law enforcement records pertaining to conduct that

¹ See former section 51.02(1) of the Family Code (defining "child" for purposes of title 3 of Family Code as person who is ten years of age or older and under seventeen years of age).

occurred before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). In this case, the submitted incident report relates to juvenile conduct that occurred prior to September 1, 1997, but after January 1, 1996. Therefore, we find that neither section 58.007 nor former section 51.14(d) applies to this information, and none of this information may be withheld under section 552.101 in conjunction with either of these provisions.

You also argue that the submitted information is excepted from disclosure pursuant to the case of *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 finds that legitimate law enforcement interests exist to withhold certain information related to active criminal cases). In this regard, we understand you to argue that the submitted information is excepted under section 552.101 as information made confidential by judicial decision. However, *Houston Chronicle* did not determine the confidentiality of any information for purposes of section 552.101. Further, although the court in *Houston Chronicle* construed the predecessor to section 552.108 of the Government Code, you have not raised section 552.108 as an exception to disclosure in this case, and therefore, you have waived this exception. *See* Gov't Code § 552.301(a), (b), .302. Accordingly, we determine that none of the submitted information may be withheld under section 552.101 in conjunction with the court's holding in *Houston Chronicle*, or under section 552.108.

We note, however, that submitted incident report contains Texas driver's license numbers, as well as a license plate and vehicle identification number that are subject to 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 must withhold the Texas driver's license numbers, vehicle identification number, and license plate number that we have marked under section 552.130.

However, 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”). The submitted incident report concerns a automobile/pedestrian accident that resulted in the death of the pedestrian. The purpose of section 552.130 is to protect privacy. Because privacy lapses at death, the deceased individual’s driver’s license number must be released.

Additionally, we note that the submitted incident report contains social security numbers that may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* 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). However, the submitted incident report contains other social security numbers that may be confidential under section 552.101 in conjunction with the federal law. We have no basis for concluding that any of these social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the department must withhold the marked driver’s license numbers, vehicle identification number and license plate number under section 552.130 of the Government Code. With the exception of that relating to the deceased individual, the social security numbers may be confidential under federal law. All remaining portions of the submitted incident report must be released to the requestor.

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).

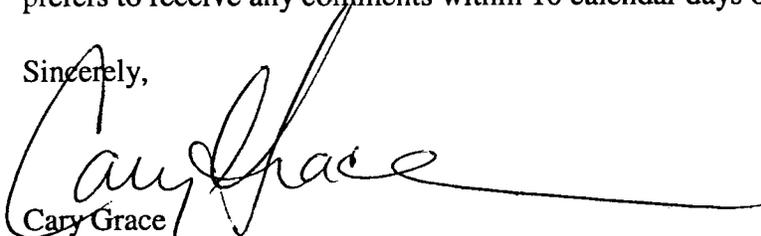
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Cary Grace

Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 208813

Enc. Submitted documents

c: Ms. Kari Garaghty
400 Mineral Pond Court
Anoka, Minnesota 55303
(w/o enclosures)