



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2004

Ms. Karen Rabon  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2004-10214

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214152.

The Office of the Attorney General (the "OAG") received a request for all claim files pertaining to a specific applicant for crime victims' compensation. You claim that the requested records are excepted from disclosure under sections 552.108 and 552.132 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted information.

Section 552.132 of the Government Code provides in pertinent part as follows:

(a) In this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

(c) An election under Subsection (b) must be:

(1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and

(2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

Gov't Code § 552.132. Thus, section 552.132 protects a crime victim's identifying information.

Section 56.32, codified in Subchapter B of Chapter 56 of the Code of Criminal Procedure defines "victim" as:

(A) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct or as a result of actions taken by the individual as an intervenor, if the conduct or actions occurred in this state; and

(ii) is a resident of this state . . . ;

(B) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct or as a result of actions taken by the individual as an intervenor, if the conduct or actions occurred in a state or country that does not have a crime victims' compensation program that meets the requirements of Section 1403(b), Crime Victims Compensation Act of 1984 . . . ;

(ii) is a resident of this state; and

(iii) would be entitled to compensation under this subchapter if the criminally injurious conduct or actions had occurred in this state; or

(C) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct caused by an act of international terrorism as defined by 18 U.S.C. Section 2331 committed outside of the United States; and

(ii) is a resident of this state.

Crim. Proc. Code § 56.32(a)(11). Here, the applicant is not a crime victim as defined by section 56.32. The submitted information does not show that the applicant suffered a personal injury as a result of criminally injurious conduct. Furthermore, the application identifies another person as the crime victim. Thus, the applicant's identifying information is not excepted from disclosure under section 552.132.

Moreover, the victim is deceased. Section 552.132 was enacted to protect the privacy of an individual; therefore, the protection extinguishes upon the individual's death. *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.) (because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded."); *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). This conclusion is consistent with prior decisions of this office, which held that exceptions of the Public Information 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, section 552.132 is inapplicable in this instance, and the OAG may not withhold the information under section 552.132 of the Government Code.

Next, the OAG asserts Exhibit D is excepted under section 552.108. Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See Open Records Decision Nos. 474* (1987), *372* (1983). Where a non-law enforcement agency is in the custody of information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.

You explain that the Crime Victim Services Division of the OAG received the submitted offense report from the Austin Police Department (the "department") for the sole purpose of

processing the applicant's claim file. *See* Crim. Proc. Code art. 56.38 (stating that, upon request, law enforcement entity must release all reports to OAG for purpose of determining crime victim's compensation claim). This office has received correspondence from a legal representative of the department who states that the offense report is related to a pending prosecution. Furthermore, the representative asks that the offense report be withheld from disclosure so as not to interfere with the ongoing prosecution. Based on the submitted arguments and our review of the offense report, we agree that the release of the offense report will interfere with the detection, investigation, or prosecution of crime. *See 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). Accordingly, the OAG may withhold Exhibit D pursuant to section 552.108(a)(1) of the Government Code.

We note that Exhibit C contains confidential information. First, Exhibit C contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. 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. A social security number or "related record" 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.* We have no basis for concluding that any of the social security numbers in the file 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 Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the OAG pursuant to any provision of law, enacted on or after October 1, 1990. In addition, the deceased's social security number is not confidential because privacy extinguishes upon the individual's death.

Second, Exhibit C contains credit card numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The OAG must, therefore, withhold the marked credit card numbers under section 552.136.

Lastly, Exhibit C also contains e-mail addresses obtained from the public. Section 552.137 of the Government Code provides:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The OAG must, therefore, withhold the marked e-mail addresses of members of the public under section 552.137.

In summary, the OAG must withhold the personal e-mail addresses under section 552.137 and the credit card numbers under section 552.136. Except for the deceased's social security number, the remaining social security numbers may be confidential under federal law. The OAG must release the rest of Exhibit C. The OAG may withhold Exhibit D under section 552.108.

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,

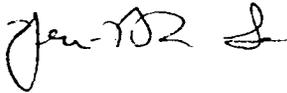
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 214152

Enc: Marked documents

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(w/o enclosures)