



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2005

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

OR2005-00799

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# 217679.

The Office of the Attorney General (the "OAG") received a request for information in the "database of payments and applications made under the Texas Crime Victims' Compensation Program." The requestor agrees that the OAG may withhold the names of victims of sexual assault and child exploitation and the victims' and claimants' social security numbers. You claim that some of the information is excepted from disclosure under sections 552.101 and 552.132 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted sample of information.<sup>1</sup>

**I. Section 552.132**

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.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.

....

(e) If the crime victim is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim and the amount of compensation awarded to that victim are public information and are not excepted from the requirements of Section 552.021.

Gov't Code § 552.132. Thus, section 552.132 protects a crime victim's identifying information. However, 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). Thus, section 552.132 is inapplicable if a victim is deceased, and the OAG may not withhold the information in such an instance under section 552.132 of the Government Code.

#### **A. No Compensation Awarded**

Pursuant to section 552.132(c)(2), a victim is afforded three years from the date of filing the application for compensation to elect whether to withhold one's identifying information. Until the necessary three years have elapsed, we conclude that the following categories of information identifying the victim are protected from disclosure: the victim's name, home

address, home telephone number, work phone number that is the victim's direct line, and the location of the crime if it is also the victim's home address. In addition, if the claimant is the victim's immediate family member, then the OAG must also withhold the following categories of claimant information that would identify the victim: the claimant's name, home address, home telephone number, and work phone number that is the claimant's direct line.<sup>2</sup> Likewise, the OAG must withhold this information if the victim elected, within the three-year period, to withhold the identifying information.

For those victims who elected to disclose their information or who failed to make an election after three years, none of their information is excepted under section 552.132. The legislative history to section 552.132 shows that the election gives "the crime victim the opportunity to remove their name from the list that would be made public." Second Reading of S.B. 1851 Before the House Comm. on State Affairs, 76<sup>th</sup> Leg. R.S. (Apr. 27, 1999) (statement of Sen. Jeff Wentworth).

### **B. Compensation Awarded**

Pursuant to section 552.132(e), if a crime victim receives compensation, the OAG must release the victim's name and amount of compensation awarded. The OAG contends that because the victim's name is made public in this instance, all other information about the victim necessarily identifies the victim and must be withheld under section 552.132. We agree that in such an instance withholding only the identifying information would not effectuate the purpose of the statute. Accordingly, for those victims who elected confidentiality within the three-year period or those whose three years have not lapsed, the OAG must withhold all other information pertaining to the victim under section 552.132.<sup>3</sup>

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<sup>2</sup>Article 56.32(a)(2) defines a "claimant" who has filed a claim for compensation as

- (A) an authorized individual acting on behalf of a victim;
- (B) an individual who legally assumes the obligation or who voluntarily pays medical or burial expenses of a victim incurred as a result of the criminally injurious conduct of another;
- (C) a dependent of a victim who died as a result of criminally injurious conduct;
- (D) an immediate family member or household member of a victim . . . ;  
or
- (E) an authorized individual acting on behalf of an individual who is described by Subdivision (C) or (D) and who is a child.

Crim. Proc. Code art. 56.32(a)(2).

<sup>3</sup>Because section 552.132 is dispositive, we do not address the OAG's privacy arguments for this information.

However, for those victims who elected to disclose their information or who failed to make an election after three years, none of their information is excepted under section 552.132.

## II. Privacy

Lastly, the OAG asserts that the identifying information of victims who failed to elect confidentiality within the three-year period and those who received compensation are protected under common-law and constitutional privacy as encompassed by section 552.101 of the Government Code. In making its privacy arguments, the OAG specifies the names of victims of sexual assault, child abuse, and domestic violence as being private. We note that the requestor does not seek to obtain the names of victims of sexual assault and child abuse. Therefore, this decision does not address such information. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85.

The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional “zones of privacy” described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These “zones” include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. The test for constitutional privacy involves a *balancing* of the individual’s privacy interests against the public’s need to know information of public concern. *See generally Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985).

As we stated above, section 552.132 was enacted to protect the privacy of an individual. Hence, if a victim fails to elect confidentiality within the three-year period prescribed by section 552.132(c), then the victim has waived her constitutional and common-law privacy interest. Consequently, the OAG may not withhold these victims’ identifying information under section 552.101 in conjunction with the privacy doctrines.

Next, we consider whether the name of victim who received compensation and timely elected confidentiality is protected under common-law or constitutional privacy. Because the victim’s name is required by statute to be disclosed in this instance, the OAG may not withhold the victim’s name under common-law privacy. As for constitutional privacy, we conclude there is a legitimate public interest in information as to applicants for or recipients of public funds, and that public interest is not outweighed by the victim’s privacy interest in

this instance. *See generally* Open Records Decision No. 600 (1992). Thus, the names of victims who received compensation are not protected under constitutional privacy, and the OAG must release them.

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).

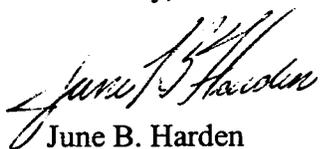
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/YHL/seg

Ref: ID# 217679

Enc: Marked documents

c: Mr. Dave Michaels  
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(w/o enclosures)