ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2005

Mr. Clark T. Askins
Askins & Armstrong, P. C.
Assistant City Attorney
City of La Porte, Texas
P. O. Box 1218
La Porte, Texas 77572-1218

OR2005-08005

Dear Mr. Askins:

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#234929.

The La Porte Police Department (the "department"), which you represent, received a request for information pertaining to a suicide. You indicate that some of the requested information has been "prepared for release" to the requestor. You claim that the remaining requested information is either not subject to the Act or excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments, the exception you claim, and reviewed the submitted information.

Initially, we note that the department has redacted some information in the offense report that you state has been released to the requestor. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be

released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), 552.302.

The department has redacted in the offense report the Texas driver's license numbers. Section 552.130 of the Government Code requires the department to withhold information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Section 552.130 is designed to protect individuals' privacy, and that privacy is a personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Accordingly, one of the Texas driver's license numbers you have redacted belongs to a living individual and must be withheld under section 552.130. The decedent's Texas driver's license number, however, may not be withheld under section 552.130 and must be released.

We next address the request for physical evidence related to the incident. This office has ruled that tangible physical items are not "information" as that term is contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). Thus, we find that the requested "items taken from my home or John" are not public information as that term is defined in section 552.002 of the Government Code. Consequently, we agree that the department is not required to release such tangible evidence to the requestor under the Act. *See* Gov't Code §§ 552.002,.021.

The department next argues that the suicide note and the 911 audiotape are exempt from disclosure under section 552.108(a)(2). Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication [.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You state that the submitted information relates to a closed investigation that concluded in a result other than conviction or deferred adjudication. Based on your representations and our review of the submitted information, we find that section 552.108(a)(2) is applicable in this instance.

In summary, the department is not required to release the requested tangible evidence under the Act. The department may also withhold the note and the 911 audiotape under section 552.108(a)(2) of the Government Code. Finally, the department must withhold one of the Texas driver's license numbers under section 552.130 of the Government Code but

must release the Texas driver's license number of the decedent that has been redacted from the offense report.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

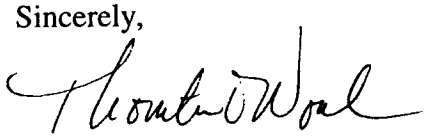
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Thornton O. Wood
Assistant Attorney General
Open Records Division

TOW/krl

Ref: ID#234929

Enc. Submitted documents

c: Ms. Laurie Lou Drew
3817 Youpon Drive
La Porte, Texas 77571
(w/o enclosures)