



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2005

Ms. Valecia R. Tizeno  
Assistant City Attorney  
City of Port Arthur  
P. O. Box 1089  
Port Arthur, Texas 77641-1089

OR2005-09200

Dear Ms. Tizeno:

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# 234086.

The Port Arthur Police Department (the "department") received a request for all information related to a particular accident. You state that you will release basic information, but claim that the remaining 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.

Initially, we note that the submitted information includes an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has provided the required information. Accordingly, the department must release the submitted ST-3 accident report form pursuant to section 550.065(c) of the Transportation Code.

Turning to your claimed exception, section 552.108 provides in part:

- (a) 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) 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;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication;

Gov't Code § 552.108(a)(1), (a)(2), (b)(1), (b)(2). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication.

We note that 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* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the submitted documents "are internal records of the Port Arthur Police Department" and that the "items are investigatory records of a fatality that occurred within the City of Port Arthur." You have not explained, however, how the release of any of the submitted information would interfere either with the detection, investigation, or prosecution of crime or with law enforcement and crime prevention in general. *See* Gov't Code § 552.108(a)(1), (b)(1). You also have not demonstrated that the submitted information pertains to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.108(a)(2), (b)(2). Thus, the department has failed to demonstrate that the submitted information is excepted from disclosure under section 552.108, and none of it may be withheld pursuant to this exception. *See* Gov't Code §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706.

However, the submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. The department must withhold the Texas motor vehicle record information that we have marked under section 552.130. We note, however, that the purpose of section 552.130 is to protect the privacy interests of individuals. Some of the submitted motor vehicle information pertains to an individual who is deceased. Since the right of privacy lapses at death, the department may not withhold the deceased individual’s Texas driver’s license number. See generally *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229; H-917; Open Records Decision No. 272 at 1. If, however, a living individual has an ownership interest in the victim’s vehicle, the Texas license plate information must be withheld under section 552.130. If no living individual has an ownership interest in the vehicle, then the information must be released.

The submitted information also contains insurance policy 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 department must, therefore, withhold the insurance policy numbers we have marked under section 552.136.

In summary, the department must release the submitted ST-3 accident report form pursuant to section 550.065(c) of the Transportation Code. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information that we have marked. Additionally, if a living individual has an ownership interest in the victim’s vehicle, the Texas license plate information pertaining to the living individual must be withheld under section 552.130. The department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information 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).

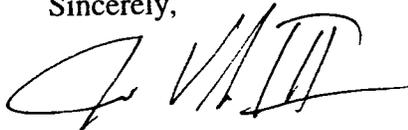
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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,



José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 234086

Enc. Submitted documents

c: James A. Moore  
President, JAM  
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(w/o enclosures)