



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

Mr. Juan P. Reyna
Juan P. Reyna, PC
P.O. Box 2067
Alice, Texas 78333

OR2005-10036

Dear Mr. Reyna:

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# 238797.

The City of Alice (the "city"), which you represent, received a request for: (1) audio and video tapes and transcripts of all August 20, 2005 emergency calls involving a named individual; (2) detoxification pepper spray forms for a named individual; (3) the criminal record of a named individual; (4) records of all investigations that followed the arrests of a named individual including those of police officers; (5) records of any other investigations concerning police officers directly involved in the September 19, 2005 incident involving a named individual; (6) records of all investigations involving a named individual and assaults to police/peace officers; and (7) all correspondence between CCPD and any public agency, including the district attorney and medical examiner concerning the named individual. You state that the city produced documents responsive to categories (5) and (7) of the request and that it does not have any documents responsive to category (2).¹ You claim that the

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.— San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Gov't. Code § 552.101. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

In category (3) of the request, the requestor asks for the criminal record of a named individual. We note, however, that the named individual is deceased. Because the privacy rights of an individual lapse upon death, we conclude that the city may not withhold any compiled criminal history information that relates to the deceased individual based upon common law privacy. *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.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (protection afforded by provision enacted to protect privacy of an individual extinguishes upon individual's death). Thus, the submitted information in Exhibit D may not be withheld under section 552.101 and common law privacy.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Tex. Gov't Code* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the information responsive to categories (1), (4), and (6) of the request, which you have submitted as Exhibits B and C, pertains to an ongoing criminal investigation by the Jim Wells County District Attorney. Based on this representation, we agree that section 552.108(a)(1) is applicable to the information contained in Exhibits B and C. *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).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense information, you may withhold the information submitted in Exhibits B and C based on section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the city must withhold Texas motor vehicle record information we have marked pursuant to 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 city may not withhold the deceased individual's Texas license plate 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-197; Open Records Decision No. 272 at 1. If a living individual has an ownership interest in the deceased'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.

Finally, the submitted information also include the social security number of an individual other than the decedent. Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the city must withhold the social security number we have marked in the submitted information under section 552.147.³

In summary, with the exception of basic information that must be released, the city may withhold the submitted information in Exhibits B and C under section 552.108(a)(1) of the Government Code. The city must withhold the Texas motor vehicle record information that we have marked. 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

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

section 552.130 of the Government Code. Additionally, the city must withhold the social security number we have marked under section 552.147 of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Matt McLain". The signature is written in a cursive, flowing style.

Matthew T. McLain
Assistant Attorney General
Open Records Division

MTM/jh

Ref: ID# 238797

Enc. Submitted documents

c: Ms. Nancy Martinez
P.O. Box 9136
Corpus Christi, Texas 78469
(w/o enclosures)