ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2005

Mr. Randy A. Stoneroad
Police Legal Advisor
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2005-11121

Dear Mr. Stoneroad:

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# 237952.

The Corpus Christi Police Department (the "department") received two requests for information regarding a specified incident and a named individual. You state that you have released some information, but you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit B pertains to a pending criminal investigation. Based upon this representation, we conclude that the release of Exhibit B would 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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185. Thus, with the exception of the basic front page offense information, which you state that you have released, you may withhold Exhibit B pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You assert that Exhibit C is protected by section 411.083 of the Government Code as criminal history record information ("CHRI"). CHRI that is generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review of the information in Exhibit C, we find that it does not consist of CHRI generated by TCIC or NCIC. Accordingly, Exhibit C may not be withheld under section 552.101 in conjunction with chapter 411 of the Government Code.

We note, however, that Exhibit C 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."[1] Gov't Code § 552.130. We note that the purpose of section 552.130 is to protect the privacy interests of individuals and that the right to privacy lapses at death. *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. Thus, the Texas driver's license number pertaining to the deceased individual is not excepted from disclosure under section 552.130. However, if the marked Texas license plate and vehicle identification information pertains to vehicles in which any living individual has an ownership interest, then the department must withhold this information under section 552.130. However, if no living individual has an ownership interest in these vehicles, then the marked information is not excepted from disclosure under section 552.130 and must be released to the requestors.

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[1] This office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, except for basic information, Exhibit B may be withheld under section 552.108(a)(1) of the Government Code. To the extent that the information we have marked pertains to vehicles in which a living individual has an ownership interest, the department must withhold this information under section 552.130 of the Government Code. The remaining information must be released to the requestors.

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).

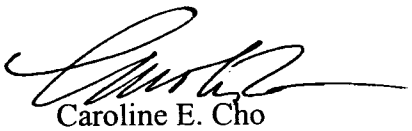
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 237952

Enc. Submitted documents

c: Ms. Janie Zamora
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901 Leopard, Suite 301
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(w/o enclosures)

Ms. Nancy Martinez
Staff Reporter
Corpus Christi Caller Times
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Corpus Christi, Texas 78469
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