



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2006

Mr. Denis C. McElroy
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-14726

Dear Mr. McElroy:

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# 266896.

The City of Fort Worth (the "city") received a request for the police report of a shooting at a specified address on July 21, 2006, as well as any other information for this address.¹ You state you have released some information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The city must withhold the information you

¹For your reference, the city has designated this request number 5343-06.

have marked in Exhibit C-3, as well as the additional information we have marked, pursuant to section 552.101 in conjunction with common-law privacy.

Section 552.108(a) 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* 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 submitted information in Exhibits C-1 and C-2 relates to pending criminal investigations and prosecutions and provide documentation from the city police department and Tarrant County District Attorney’s Office requesting that this information not be released. Based on these representations, we conclude that the release of this information 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). Thus, we agree that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except 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*, 531 S.W.2d 177, 186-187. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Exhibits C-1 and C-2 pursuant to section 552.108(a)(1).

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov’t Code § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information marked in Exhibit C-3 pursuant to section 552.130.

In summary, the city must withhold from Exhibit C-3 the information marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the information marked pursuant to section 552.130 of the Government Code. Except for basic

information, the city may withhold Exhibits C-1 and C-2 pursuant to section 552.108 of the Government Code. The remaining submitted information must be released.

You also request that this office issue a previous determination allowing the city to withhold Texas driver's license numbers, Texas-issued state identification numbers, Texas license plate numbers, and Texas license years of motor vehicles under section 552.130 of the Government Code. Therefore, per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that the following are excepted from public disclosure under section 552.130: (1) a Texas driver's license number; (2) a Texas-issued state identification number; (3) a Texas license plate number; and (4) a Texas license year of a motor vehicle. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). We note, however, that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, a person's section 552.130 information must be released to that person or that person's authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). Moreover, because section 552.130 was enacted to protect the privacy of an individual, the protection extinguishes upon the individual's death. This conclusion is consistent with prior decisions of this office, which have held that the exceptions to the Act that only protect a person's privacy interest do not survive the death of that person. *See* Attorney General Opinion H-917 (1976) (stating that common-law privacy under Gov't Code § § 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (stating that Gov't Code § 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (stating Gov't Code § 552.114 does not except student records after student's death). Thus, the city may not withhold a deceased person's section 552.130 information. Further, this previous determination does not apply to Texas motor vehicle information found in a Peace Officer's Accident Report, form ST-3 or CRB-3. *See* Transp. Code §§ 550.061-.068 (regarding accident reports completed pursuant to Transp. Code ch. 550). Finally, the city may not withhold section 552.130 information in instances when a requestor has a statutory right of access to the information at issue. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

This previous determination applies only to the following types of information requested of the city: (1) a Texas driver's license number; (2) a Texas-issued state identification number; (3) a Texas license plate number; and (4) a Texas license year of a motor vehicle. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to these types of information requested of the city. *See id.*

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 266896

Enc. Submitted documents

c: Mr. Marcus Hartranft
RE: PIR 5343-06
161 Harrisdale
Fort Worth, Texas 76114
(w/o enclosures)