



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2006

Chief Paul A. Hromadka
Lake Jackson Police Department
5 Oak Drive
Lake Jackson, Texas 77566

OR2006-05849

Dear Chief Hromadka:

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# 250871.

The Lake Jackson Police Department (the "department") received a request for "the internal affairs investigation report regarding the March 3 death of [a named individual] in the jail." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides several categories of information that are not excepted from required disclosure unless they "are expressly confidential under other law," and provides in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1983), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information is expressly public under section 552.022(a)(1) and may only be withheld if confidential under other law or excepted from disclosure under section 552.108.² Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 663 (1999) (governmental body may waive section 552.103). Therefore, the department may not withhold any of the submitted information under section 552.103. However, the records at issue include information that is subject to section 552.130 of the Government Code which constitutes other law for purposes of section 552.022. Accordingly, we will address that exception.³

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. We observe, however, that section 552.130 protects the privacy interest of the individual, and because that right of privacy is purely personal, it lapses upon death. *See Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Thus, motor vehicle information pertaining to deceased persons may not be withheld under section 552.130. However, if the Texas motor vehicle information at issue pertains to a vehicle in which any living individual has an ownership interest, then the department must withhold this information under section 552.130. If no living individual has an ownership interest in this vehicle, then the information at issue is not excepted from disclosure under section 552.130 and must be released to the requestor along with the remaining submitted information.

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

²You do not claim that the information at issue is excepted from disclosure under section 552.108.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 250871

Enc. Submitted documents

c: Ms. Jen Sansbury
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(w/o enclosures)