



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2006

Mr. John T. Patterson
Assistant City Attorney
Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2006-06396

Dear Mr. Patterson:

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# 251788.

The Waco Police Department (the "department") received a request for a copy of the investigation into the accidental death of a named individual at the American Vault Corporation. You state that you are releasing a portion of the requested information. You also indicate that some the requested information may be subject to third party privacy interests. Thus, pursuant to section 552.305 of the Government Code, you have notified the deceased individual's family of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). You claim that the remaining requested information is excepted from disclosure under sections 552.101 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." This section encompasses information protected by other statutes. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. We understand you to assert that the City of Waco is part of an emergency communications district that was established under section 772.318 of the Health

and Safety Code. Therefore, some of the submitted information is confidential under chapter 772. The originating telephone number and address the department highlighted in Exhibit 3 are excepted from public disclosure based on section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses emergency medical services ("EMS") records made confidential by section 773.091 of the Health and Safety Code. Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Confidential EMS records may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." Health & Safety Code § 773.092(e)(4). When a patient is deceased, his personal representative may consent to the release of his records. Health & Safety Code § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of EMS Act). This consent must be written and signed by the patient, authorized representative, or personal representative and must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Accordingly, except for information enumerated in section 773.091(g), the portion of the submitted information depicting EMS records is confidential under section 773.091(b) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. However, the department must release them upon receipt of proper consent pursuant to section 773.093(a). *See* §§ 773.092, .093; Open Records Decision No. 632.

You claim that the submitted crime scene photographs of the deceased should be withheld under section 552.101 of the Government Code in conjunction with common law privacy. We note that the right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *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.); Open Records Decision No. 272 at 1 (1981). However, the United States Supreme

Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). In this instance, you indicate that you have notified the surviving family members of the request and of their right to assert a privacy interest in the release of the death-scene photographs. As of the date of this letter, we have not received any comments from the surviving family members. Accordingly, we have no basis for determining that the family members have a privacy interest in the release of the photographs of their deceased relative. Therefore the submitted photographs must be released.

You claim that some of the remaining information is excepted under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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[or]
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information and the state identification information we have marked as well as the license plate numbers in the submitted photographs under section 552.130 of the Government Code.

In summary, the addresses and telephone numbers you have marked in Exhibit 3 must be withheld under section 552.101 of the Government Code in conjunction with Chapter 772 of the Health and Safety Code. The submitted EMS information must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The Texas motor vehicle information we have marked and the license plate numbers in the submitted photographs must be withheld under section 552.130 of the Government Code. The remaining submitted 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,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/eb

Ref: ID# 251788

Enc. Submitted documents

c: Mr. J. J. Gradoni
14520 Wunderlich, Suite 120
Houston, Texas 77069
(w/o enclosures)