



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2006

Ms. Bertha A. Ontiveros  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2006-06600

Dear Ms. Ontiveros:

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# 252257.

The El Paso County Sheriff's Department (the "department") received a request for numerous categories of information pertaining to a specified traffic accident that occurred on March 10, 2006. You state that you have released or made available some of the requested information to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in submitting the requested photographs for our review. When a governmental body fails to comply with the procedural requirement of section 552.301, the information at issue is presumed public. *See Gov't Code* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See Gov't Code* § 552.302; *Hancock*, 797 S.W.2d at 381. Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions No. 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); Open Records Decision No. 665 at 2 n.5

(2000) (discretionary exceptions generally). Thus, the department may not withhold the requested photographs under section 552.103 or section 552.108. However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the department's arguments against disclosure of the requested photographs under this exception.

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. This section encompasses information protected by other statutes, such as section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate . . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25. You indicate that the exceptions to confidentiality provided in section 11 of article 49.25 are not applicable in this instance. Therefore, we conclude that the department must withhold the autopsy photographs under section 552.101 of the Government Code as information made confidential by law. The remaining photographs are not autopsy photographs and may not be withheld under this exception.

We note that the remaining submitted photographs contain Texas-issued motor vehicle record information. Section 552.130 of the Government Code excepts from public 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 note that section 552.130 does not apply to out-of-state motor vehicle record information. We further note 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. Accordingly, pursuant to section 552.130, the department must withhold those portions of the photographs that reveal Texas motor vehicle record information pertaining to vehicles in which any living individual has an ownership interest. If the

department is unable to redact the portions of the submitted photographs that reveal this information, then those photographs must be withheld in their entirety under section 552.130. The department may not withhold the Texas motor vehicle record information pertaining to vehicles in which no living individual has an ownership interest. As you make no other arguments, the remaining submitted photographs must be released to the requestor.

We now address your arguments for the remaining submitted information. 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.” 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 id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information relates to an ongoing criminal investigation. Based upon this representation, 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, with the exception of basic information, which you state has been released to the requestor, the department may withhold the remaining submitted information under section 552.108(a)(1).<sup>1</sup>

In summary, the department must withhold the submitted autopsy photographs under section 552.101 of the Government Code in conjunction with article 49.25 of the Code of Criminal Procedure. Pursuant to section 552.130, the department must withhold those portions of the photographs that reveal Texas motor vehicle record information pertaining to vehicles in which any living individual has an ownership interest. If the department is unable to redact the portions of the submitted photographs that reveal this information, then those photographs must be withheld in their entirety under section 552.130. The remaining submitted photographs must be released to the requestor. With the exception of basic information, the remaining submitted information may be withheld under section 552.108 of the Government Code.

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

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<sup>1</sup>As we are able to resolve this under section 552.108, we do not address your other claim for exception of the information, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/krl

Ref: ID# 252257

Enc. Submitted documents

c: Mr. David Duran  
1210 E. San Antonio Avenue  
El Paso, Texas 79936  
(w/o enclosures)