ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2008

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2008-04925

Dear Ms. McClellan:

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# 307217.

The Dallas Police Department (the "department") received a request for a specified incident report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the present request asks for information identical to a request that was the subject of a previous ruling from this office. In Open Records Letter No. 2008-00472 (2008), the department failed to comply with section 552.301 of the Government Code in requesting a ruling from our office, and thus waived its claim under section 552.108 of the Government Code. In that decision, however, the department was not required to release the requested information because it raised 552.108 on behalf of the Dallas County District Attorney. *See* Open Records Decision No. 586 at 3 (1991) (determining the need of another governmental body to withhold law enforcement information under section 552.108 can provide a compelling reason to overcome the presumption of openness). Although you raise section 552.108 as an exception to the disclosure of the identical information in the present request, this exception is discretionary and may be waived. As such, section 552.108 does not make information confidential. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open

Records Decision No. 522 (1989) (discretionary exceptions in general). You do not inform us that another governmental body continues to assert section 552.108 for this information. Therefore, since the department waived its claim under section 552.108 of the Government Code in Open Records Letter No. 2008-00472 with respect to the requested information, we conclude it may not be withheld on that basis.

A portion of the remaining information contains motor vehicle record information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.[1] Gov't Code § 552.130(a)(1), (2). We note, however, that section 552.130 is designed to protect individuals' privacy and that the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489(Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, information from motor vehicle records that were issued to a person who is now deceased may not be withheld under section 552.130 . The department must withhold the Texas motor vehicle record information we have marked 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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[1]The Office of the Attorney General will raise mandatory exceptions like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eb

Ref: ID# 307217

Enc. Submitted documents

c: Mr. Max Whitworth
P.O. Box 580
Nevada, Texas 75173
(w/o enclosures)