



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2008

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2008-16986

Dear Ms. Webster:

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# 329906.

The City of Waco (the "city") received a request for information pertaining to a specified police report.¹ You state that you are releasing the police report, CAD report, audio, video, and the Texas Police Officer's Crash Report. You claim that the submitted photographs are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received comments from interested parties. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the written request for information. *See id.* § 552.301(e)(1)(B). As of the date of this letter, however, you have not submitted to this office a copy of the written request for information. Consequently, we find the city failed to comply with the requirements of section 552.301.

¹As you have not submitted a copy of the request, we take our description from your brief.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See Open Records Decision No. 150 at 2* (1977). Because your claim under section 552.101 of the Government Code and third party interests can provide compelling reasons to withhold information, we will consider whether or not the submitted information is excepted from disclosure under the Act.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person; and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. *Id.* at 683. You state that the submitted photographs of deceased individuals are protected by common-law privacy. We note, however, that because it is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). The United States Supreme Court has determined, however, 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 state that you have notified the deceased individuals' family members of the request and of their right to assert a privacy interest in the submitted death scene photographs.² In this instance, the deceased individuals' family members have asserted privacy interests in the release of the death scene photographs. After reviewing the family members' comments, and the submitted information, we find that the family members' privacy interests in the photographs of their relatives outweighs the public's interest in the disclosure of this information. Thus, the city must withhold the submitted image files labeled ay-065 through ay-088, ay-090

²See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

through ay-105, ay-129, ay-131 through ay-132, ay-134 through ay-138, ay-140 through ay-150, ay-237 through ay-238, ay-243 through ay-249, ay-253 through ay-254, ay-260 through ay-269, ay-273 through ay-277, ay-280, ay-288 through ay-309, KV-002 through KV-007, KV-011 through KV-018, KV-032 through KV-039, KV-041, and KV-060 through KV-072 under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the remaining photographs contain Texas license plate numbers. 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.³ Gov't Code § 552.130. We note that section 552.130 does not encompass motor vehicle record information that pertains exclusively to a deceased individual. *See* Open Records Decision No. 272 (1981). Thus, if living persons have ownership interests in the vehicles to which the license plates in the remaining photographs belong, the license plate numbers must be withheld under section 552.130; however, if the city is unable to redact this information from the remaining photographs, then the photographs containing license plate numbers must be withheld in their entirety pursuant to section 552.130. If the license plate numbers do not belong to living persons, the license plate numbers must be released.

~~In summary, the city must withhold the submitted image files labeled ay-065 through ay-088, ay-090 through ay-105, ay-129, ay-131 through ay-132, ay-134 through ay-138, ay-140 through ay-150, ay-237 through ay-238, ay-243 through ay-249, ay-253 through ay-254, ay-260 through ay-269, ay-273 through ay-277, ay-280, ay-288 through ay-309, KV-002 through KV-007, KV-011 through KV-018, KV-032 through KV-039, KV-041, and KV-060 through KV-072 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the license plate numbers from the remaining photographs if living persons have interests in the motor vehicles to which the license plates relate; however, the city must withhold the photographs containing license plates in their entirety if it is unable to redact the portions of the photographs that reveal the license plate information. The remaining submitted information must be released to the requestor.~~

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

³The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). If the governmental body does not file suit over 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).

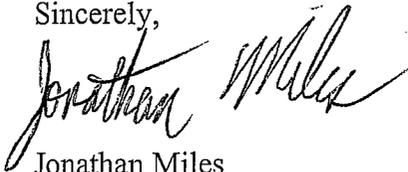
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/ma

Ref: ID# 329906

Enc. Submitted documents

c: Requestor
(w/o enclosures)
