



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

Mr. J. Eric Magee
For Bandera County
Allison, Bass & Associates, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2011-11573

Dear Mr. Magee:

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# 426588.

The Bandera County Sheriff's Department (the "sheriff"), which you represent, received a request for information related to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.148 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of a completed report subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "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). Pursuant to section 552.022(a)(1), completed investigations are expressly public unless they are either excepted under 552.108 of the Government Code or are expressly confidential under "other law." Although you raise section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception to

¹Although you did not raise section 552.148 until the fifteen business-day deadline, because this section is a mandatory exception, we will address the applicability of your argument. See Gov't Code §§ 552.301(b), .302.

disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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 Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not “other law” that makes information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold the submitted information under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.130, and 552.148, we will consider the applicability of these exceptions to the submitted information.²

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. Section 552.101 encompasses the doctrine of 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. We note the common-law 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). Thus, information that would otherwise be confidential under common-law privacy may not be withheld if it pertains to a deceased individual. Upon review, we find you have failed to demonstrate that any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff may not withhold this information under section 552.101 on that basis.

Section 552.148 of the Government Code provides:

- (a) In this section, “minor” means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:
 - (1) the name, age, home address, home telephone number, or social security number of the minor;

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (2) a photograph of the minor; and
- (3) the name of the minor's parent or legal guardian.

Gov't Code § 552.148(a), (b). Section 552.148 specifically applies to "information maintained by a municipality[.]" Gov't Code § 552.148(b) (emphasis added). Because the sheriff is not a municipality, section 552.148 of the Government Code will not apply in this instance, and the sheriff may not withhold any information on this basis. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994)) (in applying plain and common meaning of statute, one may not by implication enlarge meaning of any word beyond its ordinary meaning, especially when one can discern legislative intent from reasonable interpretation of statute as written).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); ORD 272 at 1. We have marked driver's license numbers that belong to living individuals. The sheriff must withhold this information under section 552.130 of the Government Code.³ As you raise no additional exceptions to disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tamara Wilcox', is written above the typed name.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 426588

Enc. Submitted documents

c: Requestor
(w/o enclosures)