



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Mr. Peter Gruning
For the City of Lockart
Duvall, Gruning & Deitz, P.L.L.C.
112 North LBJ Drive
San Marcos, Texas 78666

OR2011-13246

Dear Mr. Gruning:

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# 430152.

The Lockhart Police Department (the "department"), which you represent, received a request for report numbers 201011012, 200802249, 200706225, 200402109, and 200305180. You state the department released some information to the requestor with driver's license numbers redacted under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers redacted pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, section 552.130 was amended to allow a governmental body to redact the information described in subsections 552.130(a)(1) and 552.130(a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Open Records Decision No. 684 was superceded on September 1, 2011 by the statutory amendments to section 552.130 of the Government Code. Thus, a governmental body may only redact information subject to subsections 552.130(a)(1) and 552.130(a)(3) in accordance with section 552.130, not Open Records Decision No. 684. Section 552.147(b) of the Government Code authorizes the redaction of a

from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You raise section 552.102 in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL4910163 (Tex. Dec. 3, 2010), for birth dates in the submitted information. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Texas Comptroller*, the Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller*, 2010 WL 4910163, at *10. Thus, *Texas Comptroller* applies to only a public employee’s birth date maintained by the employer in an employment context. In this instance, the submitted birth dates pertain to private citizens and employees of agencies other than the department. Therefore, we conclude the department may not withhold any of the submitted birth dates under section 552.102(a) of the Government Code.

You claim report numbers 200706225 and 200402109 are excepted by section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 200706225 and 200402109 pertain to criminal cases that concluded and did not result in convictions or deferred adjudications. Based on your representation and our review, we find section 552.108(a)(2) is applicable to report numbers 200706225 and 200402109.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *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). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant, as well as a detailed description of the offense. With the exception of basic information, the department may withhold report numbers 200706225 and 200402109 under section 552.108(a)(2). You claim some of the basic information in report numbers 200706225 and 200402109 is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

living person’s social security number. *See* Gov’t Code §552.147(b). The department must release the social security number of the deceased individual in report number 201011012.

Section 552.101 of the Government Code excepts from disclosure “information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the common-law right of privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *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. 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. In report number 200706225, the complainant is the victim of an alleged sexual assault. Information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we agree the complainant’s identity in report number 200706225 is highly intimate or embarrassing and of no legitimate public interest. Therefore, in releasing basic information from report number 200706225, the department must withhold the complainant’s identity under section 552.101 in conjunction with common-law privacy. Additionally, we find that the nature of the incident in report number 200402109 is highly intimate or embarrassing and of no legitimate public interest. Therefore, in releasing basic information from report number 200402109, the department must withhold the nature of the incident from the detailed description of the offense under section 552.101 in conjunction with common-law privacy. The remaining basic information from report numbers 200706225 and 200402109 must be released.

Next, we understand you to claim report number 200305180 is confidential in its entirety under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Nat’l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). Section 552.101 of the Government Code also encompasses the constitutional right to privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fadlo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). As you acknowledge, however, the right to privacy is a personal right that lapses at death and, therefore, 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.); Attorney General Opinions JM-229 at 3 (1984), H-917 at 2 (1976); Open Records Decision No. 272 at 1 (1981).

Report number 200305180 pertains to a suicide; thus, none of the submitted information may be withheld based on the privacy interests of the subject of the report, who is deceased. However, the United States Supreme Court has determined surviving family members can have a privacy interest in information relating to their deceased relatives. *See Favish*, 124 S. Ct. 1570. In this instance, you provide a note from a family member of the deceased requesting the report be withheld. Upon review of the note and your comments, however, we find neither the department nor the deceased's family member has established any of the information in report number 200305180 is confidential on the basis of privacy. Accordingly, we find no portion of report number 200305180 may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

We note the remaining information contains motor vehicle record information that may be excepted by section 552.130 of the Government Code.² Section 552.130 provides information relating to a motor vehicle 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(a)(2)). The purpose of section 552.130 is to protect the privacy interests of individuals. Therefore, pursuant to section 552.023, the requestor has a right of access to the her own motor vehicle record information. *See Gov't Code § 552.023*. Additionally, 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*, 587 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); ORD 272 at 1. If the license plate number we have marked in report number 200305180 pertains to a vehicle in which a living person owns an interest, the marked license plate number must be withheld under section 552.130 of the Government Code. If no living person owns an interest in the vehicle at issue, the license plate number we marked may not be withheld under section 552.130.

In summary, with the exception of basic information, the department may withhold report numbers 200706225 and 200402109 under section 552.108(a)(2) of the Government Code. In releasing basic information from those reports, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If a living person owns an interest in the vehicle to which the license plate number we have marked pertains, that license plate number must be withheld under

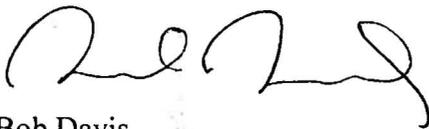
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 of the Government Code. As you raise no other exceptions to disclosure, the remaining submitted 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 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 black ink, appearing to read 'Bob Davis', written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 430152

Enc. Submitted documents

c: Requestor
(w/o enclosures)