



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Ms. M. Ann Montgomery-Moran
Assistant County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2011-13270

Dear Ms. Montgomery-Moran:

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# 431083.

The Ellis County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified investigation. You state the sheriff has made some of the requested information available to the requestor, but claim some of the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-12057 (2010). In Open Records Letter No. 2010-12057, we determined the sheriff may withhold information it had marked under section 552.108(a)(2) of the Government Code. We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the sheriff may continue to rely on Open Records Letter No. 2010-12057 as a previous determination and withhold the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which

prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2010-12057, we will address your arguments against disclosure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code §552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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). You state the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information you have marked under this section.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). We note some of the information you have marked under section 552.108, including a detailed description of the offense in the narrative portion of the report, constitutes basic information for purposes of *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, the sheriff may withhold the information you have marked under section 552.108.¹

You also seek to withhold the driver's license number of a deceased individual under section 552.130 of the Government Code. Section 552.130(a)(1) of the Government Code provides a motor vehicle operator's or driver's license is excepted from disclosure under the Act. 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). However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *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) (privacy rights lapse upon death). Accordingly, the sheriff may not withhold the driver's license number of the deceased individual you have marked under section 552.130.

To conclude, the sheriff may continue to rely on Open Records Letter No. 2010-12057 as a previous determination and withhold the submitted information that is identical to the information previously requested and ruled upon by this office. With the exception of basic

¹As our ruling is dispositive, we do not address your other argument to withhold this information.

information, the sheriff may withhold the information marked under section 552.108(a)(2) of the Government Code. The sheriff must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 431083

Enc. Submitted documents

c: Requestor
(w/o enclosures)