



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-14505

Dear Mr. Almonte:

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# 432034.

The El Paso Police Department (the "department") received a request for three specified cases pertaining to a deceased individual. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 the doctrines of common-law and constitutional privacy. Common-law privacy protects information if the information (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 demonstrated. *See id.* at 681-82.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently; and (2) an individual's interest in avoiding

disclosure of personal matters. Open Records Decision No. 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)).

You assert report number 11-179279 is confidential in its entirety under section 552.101 in conjunction with common-law privacy. We note because privacy 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. Accordingly, information pertaining solely to a deceased individual may not be withheld on common-law privacy grounds. *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.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Because report number 11-179279 pertains to a deceased individual, no portion of it may be withheld under section 552.101 in conjunction with common-law privacy based on the privacy interests of the deceased individual.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report numbers 11-179279, 09-330186, and 06-170385 relate to pending criminal investigations. Based on your representation and our review of the information at issue, we conclude that the release of report number 11-179279 would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to this report. However, we note report number 06-170385 involves an incident of deadly conduct by discharge of a firearm that occurred on June 9, 2006. The statute of limitations for this offense is three years. *See* Pen. Code § 22.05(b), (e) (knowingly discharging weapon at a habitation is a felony); Crim. Proc. Code art. 12.01(7) (indictment for felony not listed in articles 12.01(1)-(6) may be presented within three years from the date of the commission of the offense, and not afterward). Thus, the limitations period has passed in this case. You have not informed this office that any criminal charges were filed within the limitations period. Furthermore, you have not otherwise explained how release of this report would

interfere with the detection, investigation, or prosecution of crime. Thus, report number 06-170385 may not be withheld under section 552.108(a)(1). We note report number 09-330186 involves a driving while intoxicated incident. The submitted information reflects the listed suspect of this offense is now deceased. Because no criminal charges are possible in this case, you have failed to demonstrate how release of this information would interfere with the investigation of the case. Accordingly, we find you have not established section 552.108(a)(1) applies to report number 09-330186, and it may not be withheld on that basis.

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*. See 531 S.W.2d at 185-86. Therefore, with the exception of basic information, the department may withhold report number 11-179279 under section 552.108.

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 an agency of this state or 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). We note you have redacted a license plate number under section 552.130(a)(2) pursuant to Open Records Decision No. 684 (2009). See ORD 684 (authorizing all governmental bodies to withhold ten categories of information, including Texas license plate numbers under section 552.130(a)(2) without the necessity of requesting an attorney general decision). In addition, you claim the vehicle identification number you have marked is excepted under section 552.130. However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. See *Moore*, 589 S.W.2d at 491; ORD 272 at 1. The license plate number and vehicle identification number at issue pertain to a deceased individual's vehicle. In addition, we have marked motor vehicle record information pertaining to this vehicle. To the extent a living individual has an interest in the information relating to the deceased individual's vehicle, it must be withheld under section 552.130. However, if any of this information pertains solely to the deceased individual, it may not be withheld under section 552.130.

We note you have redacted the social security number of the deceased individual under section 552.147(b) of the Government Code.¹ Section 552.147 of the Government Code provides the social security number of a living individual is excepted from required public disclosure under the Act. Gov't Code § 552.147. Thus, this exception is not applicable to the social security number of a deceased individual and the department may not withhold that information under this section.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

In summary, except for basic information, the department may withhold report number 11-179279 under section 552.108(a)(1) of the Government Code. To the extent a living individual has an interest in the information relating to the deceased individual's vehicle, the department must withhold the marked information pertaining to this vehicle under section 552.130 of the Government Code. 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 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 432034

Enc. Submitted documents

c: Requestor
(w/o enclosures)