



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2012

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2012-02648

Dear Ms. Benton:

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# 449925 (LGL-12-081).

The City of Waco (the “city”) received a request for the incident reports related to four specified Waco Police Department (“department”) case numbers. You claim most of the submitted 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 information you submitted. As you have not submitted any information related to case number 11-25805, we assume the city has released any information related to that case number that existed on the date of the city’s receipt of the present request for information. If not, then the city must release any such information immediately.¹ See Gov’t Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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,

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 have marked the information the city seeks to withhold under section 552.108. You indicate, and have provided a memorandum from the department stating, the marked information is related to pending criminal cases. Based on your representations and the memorandum, we conclude the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.² *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). We note section 552.130 protects privacy, which is a personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Thus, section 552.130 is not applicable to the deceased person’s driver’s license number you have marked to be withheld. We have marked that information, which must be released. We agree the city must withhold the remaining driver’s license and motor vehicle information you have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides “[t]he social security number of a *living* person is excepted from” required public disclosure under the Act.³ Gov’t Code § 552.147(a) (emphasis added). Thus, the city may not withhold the deceased person’s social security number you have marked to be withheld and must release that information, which we have marked. We conclude the city may withhold the remaining social security numbers you have marked under section 552.147 of the Government Code.

In summary, the city (1) may withhold the information pertaining to the pending cases you have marked under section 552.108(a)(1) of the Government Code; (2) must withhold the driver’s license and motor vehicle information you have marked under section 552.130 of the Government Code, except for the deceased person’s driver’s license number, which must be released; and (3) may withhold the social security numbers you have marked under

²As we are able to make this determination, we need not address your other claim for some of the marked information.

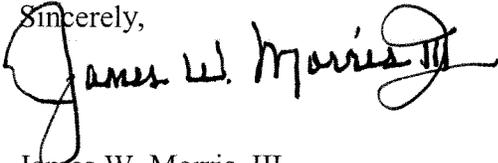
³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

section 552.147 of the Government Code, except for the deceased person's social security number, which must be released. The city must release the rest of the submitted 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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 449925

Enc: Submitted documents

c: Requestor
(w/o enclosures)