



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 12, 2013

Mr. Harold M. Streicher  
Assistant Fayette County Attorney  
151 North Washington  
La Grange, Texas 78945

OR2013-11910

Dear Mr. Streicher:

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# 492938.

The Fayette County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a). We note section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) generally protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims 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 Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A). You represent the underlying case that was the subject of the incident report at issue was presented to a grand jury and no billed. Thus, you assert section 552.108(a)(2) applies to the submitted information. However, you also represent the underlying case is an open law enforcement case because criminal charges may be brought in the future. Accordingly, you assert section 552.108(a)(1) also applies to the submitted information. Because you have provided this office with conflicting representations, we find you have not demonstrated the applicability of section 552.108 to the submitted information, and such information may not be withheld under section 552.108 of the Government Code.

We note some of the submitted information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license or driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Upon review, we have marked motor vehicle record information subject to section 552.130. We note 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 v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). We note some of the information we have marked pertains to a deceased individual's vehicle. Accordingly, the motor vehicle record information that pertains to the deceased individual may only be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the motor vehicle record information relating to that vehicle is not excepted from disclosure under section 552.130 and must be released. In either case, the sheriff's office must withhold

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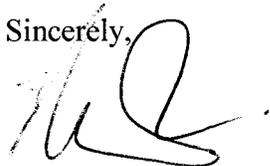
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the remaining information we have marked under section 552.130. As no further exceptions to disclosure have been raised, the remaining information must be released.<sup>2</sup>

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 492938

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a special right of access to her driver's license information being released. See Gov't Code § 552.023. We also note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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 Gov't Code § 552.130(d), (e). Thus, if the sheriff's office receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the sheriff's office to redact this driver's license information.