



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2013

Mr. Daniel Plake
Assistant County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2013-13587

Dear Mr. Plake:

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# 495722 (County ORR# 2013-2901).

The Montgomery County Sheriff's Department (the "department") received a request for original and supplemental offense reports in a specified homicide investigation. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The submitted information pertains to a prosecution that resulted in conviction.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Nevertheless, you assert the information relates to a pending criminal investigation or prosecution. You have provided correspondence from the Montgomery County District Attorney's Office stating the defendant has filed a petition for a writ of certiorari with the United States Supreme Court and a motion for DNA testing in the Ninth District Court. However, post-conviction writ proceedings do not establish the existence of an ongoing criminal investigation or prosecution for the purposes of section 552.108(a)(1). In addition, Texas courts have analogized a post-conviction DNA proceeding to that of a habeas corpus proceeding. *See Ex Parte Mines*, 26 S.W.3d 910 (Tex. Crim. App. 2000); *Cravin v. State*, 95 S.W.3d 506, 510 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd). In the *Cravin* decision, the state argued a post-conviction DNA proceeding makes a collateral attack into the validity of the conviction and, therefore, is unlike a criminal trial where the guilt of the defendant is at issue. *Cravin*, 95 S.W.3d at 510. The court agreed with the state and stated, "Unlike a criminal trial, consideration of a post-conviction DNA proceeding does not necessarily involve any witnesses or accusations against the appellant." *Id.* Thus, we find a post-conviction DNA proceeding is not a criminal proceeding for purposes of section 552.108. Therefore, we conclude you have failed to demonstrate how release of the submitted information would interfere with the detection, investigation, or prosecution of crime, and the department may not withhold the information at issue under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law 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). The types of information considered intimate or 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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

We note section 552.130 of the Government Code is applicable to some of the remaining information.² Section 552.130(a) provides the following:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). 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, to the extent the motor vehicle information we have marked pertains to living persons or vehicles owned by living persons, the department must withhold it under section 552.130. However, the department may not withhold this information under section 552.130 if it pertains to a deceased individual.

Section 552.136 of the Government Code provides in part the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987), 470 at 2 (1987).

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

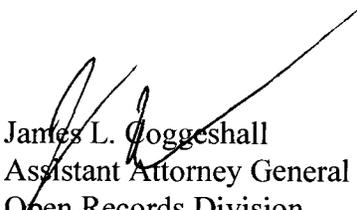
Gov't Code § 552.136(a)-(b). Section 552.136 is also designed to protect the privacy of living individuals. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. The submitted information contains account numbers, which we have marked. Accordingly, to the extent the account numbers we have marked pertain to a living person, the department must withhold this information under section 552.136. However, the department may not withhold this information under section 552.136 if it pertains to a deceased individual.

We conclude the following: the department must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we have marked under section 552.130 of the Government Code if it pertains to living persons or vehicles owned by living persons; (3) withhold the information we have marked under section 552.136 of the Government Code if it pertains to a living person; and (4) release the remaining information.³

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

³We note the submitted information contains social security numbers of living persons. 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.

Ref: ID# 495722

Enc. Submitted documents

c: Requestor
(w/o enclosures)