



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2014

Ms. Renae Mayfield
Custodian of Records
Kaufman County Sheriff's Office
1900 E. U.S. Highway 175
Kaufman, Texas 75142

OR2014-02033

Dear Ms. Mayfield:

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# 512975.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for information relating to a specified incident. You state the sheriff's office has released some of the requested information. We understand the sheriff's office has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim a portion of the submitted information is not subject to the Act. In addition and in the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130 of the Government Code.² We have considered your submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental

¹We 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. *See* Gov't Code § 552.147(b).

²Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

body.” *Id.* § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of “governmental body” under Act specifically excludes the judiciary). Information that is “written, produced, collected, assembled, or maintained by or for the judiciary” is not subject to the Act. *Id.* § 552.0035(a); *see also* TEX. SUP. CT. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act”). You assert the submitted autopsy report is a record of the judiciary. However, the submitted documents reflect the sheriff’s office obtained the autopsy report at issue in connection with its own investigation of the incident at issue and the sheriff’s office maintains the submitted autopsy report for its own purposes. Consequently, we determine the sheriff’s office has failed to establish the information at issue was collected, assembled, or maintained by or for the judiciary. Accordingly, the requested information is subject to the Act and we will consider your argument against disclosure.

Next, we must address the obligations of the sheriff’s office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov’t Code § 552.301(b). The sheriff’s office received the request for information on October 31, 2013. We note November 11, 2013, was a holiday. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body’s deadlines under the Act. You do not inform us the sheriff’s office was closed for any additional business days between October 31, 2013, and November 15, 2013. Accordingly, you were required to provide the information required by subsection 552.301(b) by November 15, 2013. However, you submitted the required information in an envelope meter-marked November 18, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the sheriff’s office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The sheriff’s office claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body’s interests and

may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of these sections to the submitted information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

We note the common-law right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *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* Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find none of the submitted information to be highly intimate or embarrassing and not of legitimate public interest; thus, it may not be withheld under section 552.101 in conjunction with common-law privacy.

We note the department has redacted driver’s license information pursuant to section 552.130 of the Government Code.³ Section 552.130(a) of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130(a). We note you have redacted driver’s license information belonging to a deceased individual in the submitted information. The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death,

³Section 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. 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 id.* § 552.130(d), (e).

motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. See *Moore*, 589 S.W.2d 489; *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229, H-917; Open Records Decision No. 272. Thus, section 552.130 is not applicable to the deceased individual's driver's license information, which we have marked for release, and the department may not withhold it on that basis. Additionally, the license plate number we have marked pertains to a vehicle the deceased individual owned. Thus, if a living person owns an interest in the vehicle at issue, the sheriff's office must withhold the license plate number we have marked under section 552.130 of the Government Code. If no living person owns an interest in the vehicle owned by the deceased individual, the sheriff's office may not withhold the license plate number we have marked under section 552.130, and it must be released.

In summary, the sheriff's office must withhold the license plate number we have marked under section 552.130 of the Government Code if a living person owns an interest in the vehicle to which it pertains. The sheriff's office 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.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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 512975

Enc. Submitted documents

c: Requestor
(w/o enclosures)