



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 12, 1998

Ms. Lysia H. Bowling
Assistant City Attorney
City of Temple
Municipal Building
Temple, Texas 76501

OR98-0111

Dear Ms. Bowling:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111978.

The City of Temple (the "city") received a request for thirteen categories of information relating to a murder and a suicide that occurred on October 10, 1997. You state that the city has complied with items number 1, 4(b), 5 and 6 of the request. You indicate that the city is unable to comply with items 2, 3, and 11 of request because responsive records do not exist. You contend that the information responsive to items 4(a), 7, 8, 9, 10, 12, and 13 is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have submitted a representative sample of the information at issue to this office for review.¹

In item 4(a) of her request, the requestor seeks "any and all criminal records" of the murder and suicide victims. You claim that this information is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy and various statutes. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." When a requestor asks a governmental body for all criminal records on a particular individual, the requestor is in essence asking that governmental body to compile the individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). However, a deceased person has no right of privacy, and Texas law does not permit the family of a deceased person to maintain an action for the deceased's right of privacy because that right is personal. Open Records Decision No. 432 (1985), citing *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); *Wood v. Hustler Magazine, Inc.*, 736 F.2d 1084 (5th Cir. 1984); see *Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy). We note also that you have not submitted to this office any criminal history information that is subject to chapter 411 of the Government Code or the similar federal provisions. Thus, we conclude that any records compiled in response to item 4(a) of the request are not excepted from disclosure under section 552.101. These records should be released.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 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; or

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

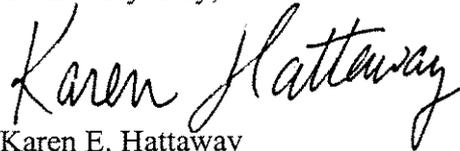
Gov't Code § 552.108. You contend that the information responsive to items 7, 8, 9, 10, 12, and 13 of the request is excepted from disclosure under section 552.108 because it relates to pending criminal cases that the Temple Police Department is actively investigating. Because the release of this information would interfere with the investigation, we conclude that section 552.108(a)(1) is applicable to the information.

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you

must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 111978

Enclosures: Submitted documents

cc: Ms. Kathryn Dettman
KWTX
4400-1C E. Centex Freeway
Killeen, Texas 76543
(w/o enclosures)

²Because we have determined that the information responsive to items 7, 8, 9, 10, 12, and 13 is excepted from disclosure under section 552.108, we need not address your claim that portions of this information are also excepted from disclosure under section 552.101. We note, however, that a governmental body may waive its section 552.108 interest and release information that is protected by section 552.108, unless the information is also excepted from disclosure under section 552.101. See Gov't Code §§ 552.007, .352.