OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 29, 2002

Ms. Blanca E. Sanchez
Custodian of Records
Hidalgo County Sheriff's Department
P.O. Box 359
Edinburg, Texas 78540

OR2002-2880

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163568.

The Hidalgo County Sheriff's Department (the "department") received a request for "a copy of the offense report and other discoverable documents relating to the arrest of [a named individual] for capital murder in August 1993." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. Although you assert a belief that the requested information is confidential under article 39.14 of the Code of Criminal Procedure, you have supplied no argument explaining why or how that article would apply to the submitted information. We therefore have no basis for concluding this information should be withheld on the basis of that article. *See* Gov't Code § 552.301(e)(1)(A) (governmental body seeking to withhold requested information must supply "written comments stating why the stated exceptions apply that would allow the information to be withheld"). Furthermore, we note that article 39.14 does not expressly make information confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly

required confidentiality). Therefore, no information may be withheld under section 552.101 in conjunction with this article.

Section 552.108(a) 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, if the information does not supply the explanation on its face, 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). You acknowledge that a named individual "has already been successfully prosecuted for this crime" but nevertheless assert that the "documents should remain exempt based on [the department's] belief that [the requestor] is conducting a search for information in order to file a post-conviction writ of habeas corpus attacking [the] conviction for murder. If this is true, then disclosure of the requested information would severely hamper a retrial . . . if [the] conviction is ever reversed." We find this assertion to be too speculative to establish an on-going prosecution. As you have not otherwise explained how the release of the requested information would interfere with the detection, investigation, or prosecution of a crime, we conclude that this information may not be withheld under section 552.108.

We note, however, that the submitted information contains motor vehicle record information. Section 552.130 of the Government Code provides in relevant part:

> (a) Information is excepted from the requirement 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]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

By its terms, section 552.130 applies only to Texas-issued motor vehicle records. In addition, we note that section 552.130 is designed to protect the privacy interests of third parties, and the common law right to privacy expires upon death. Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Accordingly, to the extent that the submitted information contains Texas-issued driver's license, vehicle identification, and license plate numbers of persons who are living, that information must be withheld under section 552.130. Information from motor vehicle records that were issued by other states or issued to persons who are now deceased may not be withheld under section 552.130.

In summary, the department must withhold Texas-issued motor vehicle record information of living individuals. All other information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

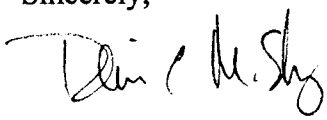
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 163837

Enc. Submitted documents

c: Mr. Randy Schaffer, P.C.
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Houston, Texas 77010
(w/o enclosures)