



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 18, 2002

Ms. Leslie R. Sweet
Legal Advisor
Sheriff Department
Frank Crowley Courts Building
133 North Industrial Boulevard, LB 31
Dallas, Texas 75207-4313

OR2002-7243

Dear Ms. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174019.

The Dallas County Sheriff Department (the "department") received a request for "all open records and all documentation regarding the arrest, and detainment" of an inmate who died while in custody. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments made by counsel for the requestor. Gov't Code §552.304 (providing for submission of public comments).

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

It appears from the documents submitted to this office that the department received the request for information on September 25, 2002. You did not request a decision from this office until October 10, 2002. *See* Gov't Code § 552.308 (concerning timeliness of action by United States or interagency mail). Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.103 is a discretionary exception under the Public Information Act (the "Act") and does not demonstrate a compelling reason to withhold information from the public. *See, e.g.*, Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general).

We note that the submitted records include motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. This provision was enacted to protect the privacy of an individual, and therefore, the protection extinguishes upon the individual's death. This conclusion is consistent with prior decisions of this office, which held that exceptions of the Act that only protect a person's privacy interest do not survive the death of that person. *See* Attorney General Opinion H-917 (1976) (common-law privacy under sections 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (section 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (section 552.114 does not except student records after student's death). Thus, as privacy rights lapse upon an individual's death, the department may not withhold driver's license information for the deceased individual. The department must withhold the license plate number of the deceased's vehicle under section 552.130 only to

the extent that a living person has an ownership interest in the vehicle. Otherwise, the department must release the license plate number to the requestor.

In summary, to the extent that a living person has an ownership interest in the vehicle, the Texas license plate number must be withheld in accordance with section 552.130. The remaining submitted information must be released to the requestor.

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

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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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 174019

Enc. Submitted documents

c: Ms. Suzanna Clifton
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(w/o enclosures)