OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 14, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
5805 North Lamar Boulevard, Box 4087
Austin, Texas 78773-0001

OR2003-4813

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184086.

The Texas Department of Public Safety (the "department") received a request for information pertaining to an investigation of an accident involving a family member of the requestor. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the submitted records comprise information that is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information that you submitted to us for review is a completed report or investigation, which falls into one of the categories of information made expressly public by section 552.022. *See* Gov't Code section 522.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law.

In this regard, we note that included among the documents you seek to withhold are accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the department or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident reports, which we have marked, under section 550.065(b).

We next address your arguments under section 552.108 of the Government Code, which provides in relevant part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:
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> . . .
>
> (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.

You contend that the submitted information is excepted from disclosure under section 552.108(a)(2) because "the investigation did not result in a conviction or deferred adjudication." However, you state that the submitted report was prepared subsequent to an "administrative review of the investigation of an accident that occurred on August 16, 1997." Section 552.108 is inapplicable to a police department's administrative investigation that does not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). Because the submitted information does not

relate to a resulting criminal investigation, we find that the submitted information is not excepted from disclosure under section 552.108.

However, section 552.130 of the Government Code is applicable to some of the submitted information. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. We observe, however, that section 552.130 protects the privacy interest of the individual, and because that right of privacy is purely personal, it lapses upon death. *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); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Thus, driver's license or motor vehicle information pertaining to deceased persons may not be withheld under section 552.130. We have marked the information in the submitted documents that the department must withhold pursuant to section 552.130.

In summary, the department must withhold the marked accident reports under section 550.065(b). We have marked the information that the department must withhold pursuant to 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 body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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# 184086

Enc. Submitted documents

c: Mr. Gary Duhon
10 Oakridge Park
Jasper, Texas 75951
(w/o enclosures)