



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2005

Mr. Randy Stoneroad
Police Legal Advisor
City of Corpus Christi
321 John Sartin
Corpus Christi, Texas 78401

OR2005-02756

Dear Mr. Stoneroad:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 221189.

The City of Corpus Christi Police Department (the "department") received a request for information relating to a specified homicide, including fingerprint information belonging to the deceased individual convicted of the homicide. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we will address the requested fingerprint 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 protected by other statutes. The submitted information includes fingerprint information that is subject to sections 560.001, 560.002, and 560.003 of the Government Code. These sections provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. The submitted fingerprint information would normally be confidential under section 560.003. However, the laws making such information confidential are intended to protect an individual's privacy. See Gov't Code § 560.002(1)(A) (individual whose biometric identifier is at issue may consent to its release). Because the right of privacy is purely personal and lapses at death, the fingerprints of the deceased individual may not be withheld on the basis of section 560.003. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984); H-917 (1976).

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Additionally, where an individual's

criminal history information has been compiled by a governmental entity, the information takes on a character that 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). However, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore*, 589 S.W.2d at 491; *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); *See 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 (1981) ("the right of privacy is personal and lapses upon death"). In this instance, both the homicide victim and the individual convicted of the homicide are deceased. The deceased individuals whose information is at issue do not have a privacy right in the information. Furthermore, we find that the department has not shown that the release of the information would implicate the privacy rights of any living individual. Consequently, the department may not withhold any information based on section 552.101 in conjunction with common law privacy.

The department also asserts that some of the submitted information is excepted from disclosure under section 552.101 in conjunction with the informer's privilege. The informer's privilege, incorporated into the Public Information Act (the "Act") by section 552.101, protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing *Wigmore, Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviario*, 353 U.S. at 60. However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. All of the witnesses in the submitted documents provided information during the course of the subject investigation. As such, you may not withhold any of their identities on this basis.

You also claim that some of the submitted information is excepted under section 552.108(a)(3) of the Government Code, which excepts from required public disclosure

“[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information relating to a threat against a peace officer collected or disseminated under Section 411.048 [of the Government Code.]” Gov’t Code § 552.108(a)(3). Section 411.048(b) of the Government Code provides that

[t]he bureau of identification and records [of the Texas Department of Public Safety (“DPS”)] shall establish and maintain a central index in the law enforcement information system maintained by the [DPS] to

- (1) collect and disseminate information relating to an individual’s expression of intent to inflict serious bodily injury or death on a peace officer; and
- (2) alert a peace officer of an expression of intent to inflict serious bodily injury or death on the officer.

Gov’t Code § 411.048(b). Section 411.048(c) provides that

[a] criminal justice agency, after making each determination required under Subsection (d) [of section 411.048], shall immediately enter into the information system an electronic report of an individual who expresses an intent to inflict serious bodily injury or death on a peace officer.¹ The agency shall enter the information in the form and manner provided by rules adopted by the director [of the DPS].²

Id. § 411.048(c). Section 411.048(d) provides that

[b]efore entering information collected under this section into the information system, a criminal justice agency must determine that the report described by Subsection (c):

- (1) is not from an anonymous source; and
- (2) consists of an expression of intent to inflict serious bodily injury or death on a peace officer.

¹Section 411.048(a)(1) adopts the definition of “criminal justice agency” found at article 60.01 of the Code of Criminal Procedure. Article 60.01(6) provides that “‘criminal justice agency’ means a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice.” Crim. Proc. Code art. 60.01(6).

²Section 411.048(i) authorizes the DPS to adopt rules to implement and enforce section 411.048. The DPS rules are found at subchapter C of chapter 5 of title 37 of the Texas Administrative Code. *See* Gov’t Code 37 T.A.C. § 5.31 *et seq.*

Id. § 411.048(d). Upon review of the information and consideration of your arguments, we find that you have not demonstrated that this information was collected or disseminated under section 411.048 of the Government Code. Therefore, the department may not withhold any of the submitted information under section 552.108(a)(3) of the Government Code.

You also raise section 552.130 of the Government Code. This section excepts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). Section 552.130(a)(1) is applicable to Texas driver’s license information. Furthermore, section 552.130 protects privacy interests. As discussed above, privacy is a purely personal right that lapses at death. *See Moore*, 589 S.W.2d 489; Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). The submitted driver’s license information pertains to a deceased individual. As such, the numbers may not be withheld under this exception.

In summary, the requested 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/AEC/sdk

Ref: ID# 221189

Enc. Submitted documents

c: Mr. William Belford
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(w/o enclosures)