



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2005

Mr. Sean K. Proctor
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27th Judicial District of Texas
P.O. Box 540
Belton, Texas 76513-0540

OR2005-7100

Dear Mr. Proctor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 229705.

The District Attorney for the 27th Judicial District (the "district attorney") received a request for information relating to a named individual. You state that the district attorney will make some of the requested information available to the requestor. You also state that the district attorney does not have possession of some of the information to which the requestor seeks access.¹ You seek to withhold other responsive information under sections 552.101, 552.103, 552.108, 552.111, 552.130, and 552.1325 of the Government Code, Texas Rule of Civil Procedure 192.5, and article 39.14 of the Code of Criminal Procedure. We have considered your arguments and have reviewed the information you submitted.²

¹We note that the Act does not require the district attorney to release information that did not exist when he received this request, create responsive information, or obtain information that is not held by or on behalf of his office. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We first note that some of the submitted information appears to have been obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury and therefore are not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). The fact that information collected or prepared by the district attorney is submitted to the grand jury does not necessarily mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney in its own capacity. Information held by the district attorney but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions, but it is not excluded from the reach of the Act by the judiciary exclusion. Open Records Decision No. 513 (1988). Thus, to the extent that the district attorney has custody of the information at issue as an agent of the grand jury, any such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. *Id.* at 4. The rest of this decision is not applicable to any such information. To the extent that the information is not held by the district attorney as an agent of the grand jury, we address its public availability under the Act.

We next note that the information at issue includes complaints. Article 15.26 of the Code of Criminal Procedure provides that “[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*[.]” Crim. Proc. Code art. 15.26 (emphasis added). Thus, an arrest warrant or an arrest warrant affidavit that has been presented to a magistrate is made public by article 15.26. Article 15.04 of the Code of Criminal Procedure provides that “[t]he *affidavit* made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” (Emphasis added.) Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref'd); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref'd) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). To the extent that the marked complaints were in fact “presented to the magistrate in support of the issuance of the warrant,” they are made public by article 15.26 of the Code of Criminal Procedure and must be released. If the complaints were not so presented, then they are not made public under article 15.26 and must be disposed of along with the rest of the submitted information.

We also note that the information at issue includes an accident report that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three pieces of information:

(1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. Under this provision, the Department of Public Safety 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 of the three items of information specified by section 550.065(c)(4). *Id.* In this instance, the requestor has not provided two of the three items of information specified by section 550.065(c)(4). Therefore, the district attorney must withhold the accident report that we have marked under section 550.065 of the Transportation Code.

We next note that the rest of the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Gov’t Code § 552.022(a)(1). In this instance, the remaining information consists of a completed investigation made of, for, or by a governmental body. Sections 552.103 and 552.111 of the Government Code are discretionary exceptions to public disclosure that protect a governmental body’s interests and may be waived. *See* Gov’t Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision No. 677 at 10 (2002) (attorney work product privilege under Gov’t Code § 552.111 may be waived). As such, sections 552.103 and 552.111 of the Government Code are not “other law” that makes information confidential for the purposes of section 552.022. Therefore, the district attorney may not withhold any of the remaining information under section 552.103 or section 552.111.

The district attorney also seeks to withhold some of the remaining information under rule 192.5 of the Texas Rules of Civil Procedure and article 39.14 of the Code of Criminal Procedure. The Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the remaining information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the remaining information. Article 39.14 of the Code of Criminal Procedure governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 575 at 2 (1990) (explicitly stating that discovery privileges are not covered by statutory predecessor to Gov’t Code § 552.101). Furthermore, article 39.14 is not one of the Texas Rules of Civil Procedure or Texas Rules of Evidence and is thus not “other law” for the purposes of section 552.022 of the Government Code. *See City of Georgetown*, 53 S.W.2d at 337. Therefore, the district

attorney may not withhold any of the remaining information under article 39.14 of the Code of Criminal Procedure.

The district attorney also asserts, however, that some of the remaining information is excepted from disclosure under section 552.108 of the Government Code. Because information that is subject to section 552.022(a)(1) may be withheld under section 552.108, we will address your claims under this exception. Furthermore, because sections 552.101, 552.130, and 552.1325 of the Government Code are “other law” for purposes of section 552.022, we also will address your claims under these exceptions.

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information that other statutes make confidential. Gov’t Code § 552.101. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b)-(c). The MPA ordinarily encompasses only records created either by a physician or by someone acting under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). However, when a file is created as the result of a hospital stay, we have concluded that all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician, created or maintained by a physician, for purposes of the MPA. *See* Open Records Decision No. 546 (1990). When a patient is deceased, as is the case here, medical records pertaining to the deceased patient may only be released upon the signed consent of the deceased’s personal representative. *See* Occ. Code §§ 159.005(a)(5). Medical records must be released upon signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Decision No. 565 at 7 (1990). We have marked information in Exhibit K that is confidential under the MPA. The district attorney must not

release that information unless he has authorization under the MPA to do so. *See* Open Records Decision No. 598 (1991).

You also seek to withhold information in Exhibit K under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. Section 773.091 provides in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b); *but see id.* § 773.091(g) (privilege of confidentiality under Health & Safety Code § 773.091 does not extend to information regarding presence, nature of injury or illness, age, sex, occupation, and city of residence of patient who is receiving emergency medical services). Because this section is not applicable to any of the remaining information in Exhibit K, the district attorney may not withhold any of that information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b). The district attorney must withhold any responsive CHRI under section 552.101 of the Government Code in conjunction with the federal law and subchapter F of chapter 411 of the Government Code.

The public availability of fingerprints is governed by 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, 560.002, 560.003. The fingerprints that we marked are confidential under section 560.003 of the Government Code. We note, however, that the requestor has submitted an authorization signed by the person who is the subject of the fingerprints to release information to his attorney. Thus, the requestor appears to have consent for release of the fingerprints under section 560.002. *See id.* § 560.002(1)(A). If not, then the district attorney must withhold the fingerprints under section 552.101 of the Government Code.

Mental health records are confidential under section 611.002 of the Health and Safety Code. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked mental health information that is confidential under section 611.002 of the Health and Safety Code. The requestor may also have a right of access to the mental health information under sections 611.004 and 611.0045. Otherwise, the district attorney must withhold the mental health information under section 552.101 of the Government Code.

Section 552.101 also encompasses article 42.12 of the Code of Criminal Procedure. Article 42.12 is applicable to a presentence investigation report and provides in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section and as directed by the judge for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant’s community supervision file and may be released only by order of the judge.

Crim. Proc. Code art. 42.12 § 9(j). None of the circumstances described in subsections (d), (e), (f), (h), (k), or (l) of section 9 appears to be present in this instance. Therefore, the district attorney must withhold the presentence investigation report that we have marked under section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure.

You also raise section 552.101 in conjunction with section 508.313 of the Government Code. Section 508.313 provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible

for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

- (1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;
- (2) a releasee; or
- (3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313. Section 508.313 is applicable only to information held by or obtained from the Texas Department of Criminal Justice ("TDCJ"). You do not inform us, and it does not otherwise appear, that any of the information that the district attorney seeks to withhold under section 508.313 was obtained from TDCJ. *See id.* § 508.313(c). We therefore conclude that the district attorney may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

You also assert that certain information relating to the crime victim is confidential under article 56.03 of the Code of Criminal Procedure in conjunction with section 552.101. The district attorney seeks to withhold the crime victim's name, address, and telephone number under article 56.03. Article 56.03 provides for the collection of information from a crime victim, the guardian of a victim, or a close relative of a deceased victim and for the use of the information by law enforcement agencies, prosecutors, and other participants in the criminal justice system. *See* Crim. Proc. Code art. 56.03(a)-(b). We further note that, under article 56.03(f):

(f) The court may not inspect a victim impact statement until after a finding of guilt or until deferred adjudication is ordered and the contents of the statement may not be disclosed to any person unless:

- (1) the defendant pleads guilty or nolo contendere or is convicted of the offense[.]

Id. art. 56.03(f). In this instance, the submitted information relates to a case in which the defendant entered a plea of no contest and was found guilty. Thus, in this instance, article 56.03(f) would not prohibit the release of the submitted victim information.

Citing article 56.09 of the Code of Criminal Procedure, you also argue that the legislature expressed its intent to protect crime victim information by providing that such information should not be made part of the court's file. Article 56.09 provides: "[a]s far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be part of the court

file.” Crim. Proc. Code art. 56.09. We note, however, that the language of article 56.09 simply limits the information to be placed in the court’s file. *See id.* The statute does not make information confidential or restrict access to the information in any location other than a court file. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure); 478 at 2 (1987) (statutory confidentiality under statutory predecessor to Gov’t Code § 552.101 required express language making certain information confidential or stating that information shall not be released to public). Therefore, you have not established, and it is not otherwise apparent to this office, how or why articles 56.03 or 56.09 of the Code of Criminal Procedure would make any of the submitted victim information confidential by law for the purposes of the Act. We therefore conclude that the district attorney may not withhold any of the information in question under section 552.101 of the Government Code in conjunction with article 56.03 or article 56.09 of the Code of Criminal Procedure.

You also seek to withhold some of the remaining information under section 552.101 in conjunction with common law and constitutional rights to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency compiles criminal history information concerning a particular individual, the compiled information takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). You assert that information compiled by the district attorney would be protected by common-law privacy. In this instance, however, the requestor is an attorney for the individual who is the subject of the requested information. As such, the requestor has a right of access to any information that would be protected from public disclosure for the purpose of protecting his client’s privacy interests. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the district attorney may not withhold any of the submitted information on privacy grounds under section 552.101 and *Reporters Committee*.

The common-law right to privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical

records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

Constitutional privacy under section 552.101 of the Government Code protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7 (1987). This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. See Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

You seek to withhold information relating to the deceased crime victim and her relatives on privacy grounds under section 552.101. Because a person’s right to privacy lapses on the person’s death, the district attorney may not withhold any of the information at issue on the basis of the decedent’s right to privacy. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); 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); Attorney General Opinion JM-229 (1984) (“the right of privacy lapses upon death”), Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Nevertheless, we have marked information that the district attorney must withhold under section 552.101 of the Government Code in conjunction with the common law privacy interests of other individuals. The district attorney may not withhold any of the remaining information in question on privacy grounds under section 552.101.

Next, we address your claims under section 552.108 of the Government Code. This exception 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 [required public disclosure] 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;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). Sections 552.108(a)(1) and 552.108(b)(1) are applicable if the release of the information would interfere with law enforcement interests. *See 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) (court delineates law enforcement interests that are present in active cases). Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. Section 552.108(a)(3) is applicable to information collected or disseminated under section 411.048 of the Government Code.

Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state.

A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you inform us that the information that you seek to withhold under section 552.108 relates to a prosecution that resulted in a three-year sentence for the offense of manslaughter. You also state that the case has not been appealed. Thus, as you do not indicate that the information in question relates to a pending criminal investigation or prosecution or otherwise demonstrate how release of any of the remaining information would interfere with law enforcement and crime prevention, we conclude that you may not withhold any of the information under section 552.108(a)(1) or section 552.108(b)(1). *See* Gov't Code § 552.108(a)(1), (b)(1). Furthermore, because you do not inform us that any of the information at issue relates to a case that concluded in a result other than conviction or deferred adjudication, you may not withhold any of the information under section 552.108(a)(2) or (b)(2). *See id.* § 552.108(a)(2), (b)(2). As you do not indicate that any of the information was collected or disseminated under section 411.048 of the Government Code, you may not withhold any of the remaining information under section 552.108(a)(3). *See id.* § 552.108(a)(3).

You state that information contained in Exhibits D and J was prepared by an attorney representing the state in anticipation of or in the course of criminal litigation. You also state that this information reflects the mental impressions and legal reasoning of the attorney representing the state. Additionally, you assert that some of the information in Exhibit H is an internal record or notation of the prosecutor's office that is maintained for use in matters relating to law enforcement and prosecution and is prepared by the prosecuting attorney or his representatives for use in litigation. Having considered your representations and reviewed the information at issue, we conclude that the district attorney may withhold all of the information in Exhibit J and a small amount of information in Exhibit D under section 552.108(a)(4) and (b)(3) of the Government Code. However, because we find that section 552.108(a)(4) and (b)(3) are not applicable to any of the information that you seek to withhold in Exhibit H, the district attorney may not withhold any of that information under section 552.108.

You also claim 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" or "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1)-(2). We note that this exception protects personal privacy interests. Therefore, the requestor has a right of access to his client's Texas driver's license and motor vehicle information, and that information may not be withheld

from the requestor under section 552.130. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We have marked Texas motor vehicle information that relates to the deceased person's vehicle. However, because the decedent's right to privacy lapsed at her death, the marked information is excepted from disclosure under section 552.130 only if a living person owns an interest in the vehicle. *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.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

Next, we address your claim under section 552.1325 of the Government Code. This exception provides as follows:

(a) In this section:

- (1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.
- (2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

- (1) the name, social security number, address, and telephone number of a crime victim; and
- (2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. Although you seek to withhold some of the remaining information under section 552.1325, we note that the crime victim to whom this information pertains is deceased. Section 552.1325 also protects personal privacy interests, and the victim's right to privacy lapsed at her death. *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). We therefore conclude that the district attorney may not withhold any of the remaining information under section 552.1325 of the Government Code.

In summary: (1) any submitted information held by the district attorney as agent of the grand jury is not subject to disclosure under the Act; (2) the complaints must be released under article 15.26 of the Code of Criminal Procedure to the extent that they were presented to a

magistrate in support of the issuance of an arrest warrant; (3) the district attorney must withhold the peace officer's accident report under section 550.065 of the Transportation Code; (4) the medical records are confidential under the MPA and must not be released unless the district attorney has authorization under the MPA to do so; (5) any responsive CHRI must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (6) the fingerprints are confidential under section 560.003 of the Government Code and must be withheld under section 552.101 of the Government Code unless the requestor has consent for their release under section 560.002; (7) the mental health information is confidential under section 611.002 of the Health and Safety Code and must be withheld under section 552.101 unless the requestor has a right of access to the information under sections 611.004 and 611.0045; (8) the district attorney must withhold the presentence investigation report under section 552.101 in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure; (9) the district attorney must withhold the information that is confidential under section 552.101 in conjunction with common-law privacy; (10) the district attorney may withhold Exhibit J and a small amount of information in Exhibit D under section 552.108(a)(4) and (b)(3) of the Government Code; and (11) the marked Texas motor vehicle information is excepted from disclosure under section 552.130 of the Government Code if a living person owns an interest in the vehicle. The rest of the submitted information must be released.³

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

³We note that the district attorney would ordinarily be required to withhold some of the remaining information from the public to protect the privacy interests of the requestor's client. Should the district attorney receive another request for this information from a requestor who would not have a right of access to private information, the district attorney should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

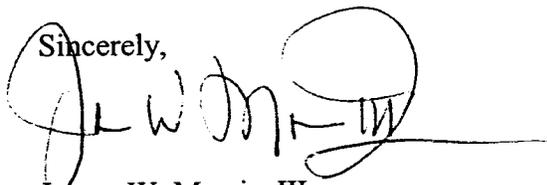
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,

A handwritten signature in black ink, appearing to read 'J. W. Morris, III', with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 229705

Enc: Submitted documents

c: Ms. Bettina Jordan
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(w/o enclosures)