



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2006

Ms. Carla M. Cordova  
Assistant General Counsel  
Texas Department of Criminal Justice  
Office of the General Counsel  
P. O. Box 4004  
Huntsville, Texas 77342-4004

OR2006-04539

Dear Ms. Cordova:

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# 246529.

The Texas Department of Criminal Justice (the "department") received a request for all information regarding a named inmate you inform us is on death row. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note and we agree that you failed to raise section 552.130 of the Government Code within the ten business day deadline mandated in section 552.301(b). See Gov't Code § 552.301(b). However, because section 552.130 is a mandatory exception that can provide a compelling reason to withhold information, we will consider your arguments under this exception. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302).

You have submitted two bundles of information for our review. One bundle contains pre-death row information and the second bundle contains post-death row information. You

claim that the bundle containing pre-death row information is excepted under section 552.134 of the Government Code. Section 552.134 relates to information about inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The department claims that the bundle at issue concerns an inmate while he was incarcerated with the department for a previous non-capital offense and is not information about an inmate sentenced to death. Because the information at issue was not created at a time when the inmate was sentenced to death and is not maintained in the inmate's current death row file, we find that section 552.134(a) is applicable and this information must be withheld under section 552.134(a) of the Government Code.

Next we address the remaining bundle of information containing post-death row information. We note that this submitted information contains a medical record. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by statute, including the Medical Privacy Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's 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. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the submitted document which is a medical record subject to the MPA. As the attorney for the individual for whom the marked information pertains, the requestor may have a right of access to it. The department must not release the marked document to the

requestor unless it has authorization under the MPA to do so. *See* Open Records Decision No. 598 (1991).

The submitted information also contains the named inmate's fingerprints. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). The submitted fingerprint information is confidential under section 560.003; however, the requestor has a special right of access to his client's own fingerprint information. *See id.* § 560.002(1). Therefore, the department must release this information, which we have marked, pursuant to section 560.002.

You claim that some of the remaining information is criminal history record information ("CHRI"), which is also encompassed by section 552.101 of the Government Code. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) 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. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. After reviewing the submitted information, we agree that some of it, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code. The remaining information, however, does not contain any CHRI generated by TCIC or NCIC, and thus, none of it may be withheld on that basis.

You claim that the identities of the inmate's family members are excepted under section 552.101 in conjunction with common-law privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). In this instance, however, you do not submit any arguments explaining how this information is intimate or embarrassing. Further, in this instance, the inmate's family member information is contained in investigative documents that were compiled by the local police department in its efforts to locate the named inmate. We note that, generally, the public has a legitimate interest in the details of

crime and police efforts to combat crime in the community. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (public's legitimate interest in community affairs is particularly sensitive and important as applied to police activity); *see also* Open Records Decision No. 408 at 10 (1984) (public has legitimate interest in information about individuals who are charged with crime). Accordingly, the department may not withhold the inmate's family member information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim that the identities of the inmate's family members are confidential under the doctrine of constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy interest is avoiding disclosure of personal matters. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

In support of your claim, under constitutional privacy you cite Open Records Letter No. 2001-3963 (2001), in which this office determined that the identities of the immediate family members that were identified in the inmate's consolidated records form, correspondence, and visitor's list must be withheld under section 552.101 in conjunction with constitutional privacy. This office has issued numerous formal and informal decisions stating that the identity of individuals who have had correspondence with an inmate are excepted from disclosure under section 552.101 in conjunction with constitutional privacy. *See, e.g.*, Open Records Decision No. 430 (1985) (list of inmate visitors protected by constitutional privacy of both inmate and visitors). However, as previously noted, the inmate's family member information is contained in investigative documents. We note that the test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Conn*, 633 F.2d 1172, 1176 (5th Cir. 1981)). Here, however, you have not submitted any arguments explaining how the family members have a privacy interest in the release of their identities. Moreover, we find that the release of information regarding the police's efforts to find the inmate outweigh any potential privacy right the family members may have in the release of their identities. *Cf. Houston Chronicle*, 531 S.W.2d at 186 (public's legitimate interest in community affairs is particularly sensitive and important as applied to police activity). Accordingly, we find that the information at issue may not be

withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

You claim that the submitted crime scene photographs of the deceased should be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. We note that the right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *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.); Open Records Decision No. 272 at 1 (1981). However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). In this instance, you indicate that you have notified the surviving family members of the request and of their right to assert a privacy interest in the release of the death-scene photographs. As of the date of this letter, we have not received any comments from the surviving family members. Accordingly, we have no basis for determining that the family members have a privacy interest in the release of the photographs of their deceased relatives. Therefore the submitted photographs must be released.

You claim that some of the remaining information is excepted under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

- (a) Information is excepted from required public disclosure 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[or]
  - (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information and the state identification information we have marked under section 552.130 of the Government Code.

We also note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the

department must withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code.<sup>1</sup>

In summary, the department must withhold the information you have marked under section 552.134 of the Government Code. The department may only release the marked medical document to the requestor in accordance with the MPA. The department must release the marked fingerprint information to the requestor pursuant to section 560.002 of the Government Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the Texas-issued motor vehicle record information and the state identification information we have marked under section 552.130 of the Government Code. The department must withhold the social security numbers under section 552.147 of the Government Code. The remaining 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).

---

<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 246529

Enc. Submitted documents

c: Mr. Alexander L. Calhoun  
P. O. Box 91825  
Austin, Texas 78709-1825  
(w/o enclosures)