



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2006

Mr. Paul F. Wieneskie
Cribbs & McFarland, P.C.
P. O. Box 13060
Arlington, Texas 76094-0060

OR2006-10790

Dear Mr. Wieneskie:

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# 259658.

The Euless Police Department (the "department"), which you represent, received two requests for (1) "'use of force' report[s] or other record[s] documenting the use of Tasers[;]" (2) "offense or incident reports documenting the circumstances under which . . . officers came into contact with any person on whom a Taser was used[;]" (3) "custodial death reports . . . documenting the death of any person in [the department's] custody on whom a Taser or stun gun was used[;]" (4) "policies regarding [the] department's use of force, including force involving Tasers[;]" (5) a specified incident report; and (6) a specified autopsy report. You inform us that the department has released some of the requested information to one of the requestors. However, you claim that the submitted information is excepted from disclosure because it relates to litigation involving the City of Euless and the department; we therefore understand you to claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.²

¹Section 552.103, the litigation exception, applies to "information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party[.]" Gov't Code § 552.103(a).

²We also note that you have not submitted a copy of the requested autopsy report. To the extent the requested autopsy report existed on the date the department received the request for information, we assume it has been released. If not, such information must be released at this time. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Specifically, section 552.022(a)(1) provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a department investigation regarding an incident that occurred in July 2005. The submitted documents indicate that the investigation was completed with a disposition of "exceptionally cleared" due to the suspect's death. We therefore find that the submitted information is a completed investigation that was made of, for, or by the department. Completed investigations must be released under section 552.022(a)(1) unless excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You do not raise section 552.108. Although you claim this information is excepted from disclosure under section 552.103 of the Government Code, we note that this exception is a discretionary exception to disclosure that does not constitute "other law" for the purposes of section 552.022.³ Accordingly, the department may not withhold the submitted information under section 552.103 of the Government Code.

We note, however, that some of the submitted information is subject to sections 552.130 and 552.136 of the Government Code, both of which constitute "other law" for purposes of section 552.022.⁴ Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. *Id.* § 552.130. We have marked a Texas motor vehicle record information that must be withheld

³Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general); *see also 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 section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential for purposes of section 552.022.

⁴The Office of the Attorney General will raise mandatory exceptions like sections 552.130 and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.130.⁵ Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. We have marked an insurance policy number that must be withheld under section 552.136.

To conclude, the department must withhold the Texas motor vehicle record information and the insurance policy number that we have marked pursuant to sections 552.130 and 552.136 of the Government Code, respectively. The remaining submitted information must be released to the requestors.

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 ten 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

⁵We note that the submitted information also includes the deceased suspect’s Texas driver’s license number. The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information pertaining to a deceased individual may not be withheld under section 552.130. See generally *Moore v. Charles E. 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, 146-147 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

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 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/eb

Ref: ID# 259658

Enc. Submitted documents

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