



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2006

Mr. Thomas P. Brandt
Counsel for Johnson County
Fanning, Harper & Martinson, P.C.
Two Energy Square
4849 Greenville Avenue, Suite 1300
Dallas, Texas 75206

OR2006-11302

Dear Mr. Brandt:

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# 260985.

The Johnson County Sheriff's Office (the "sheriff's office"), which you represent, received a request for a specified incident report and an autopsy report. You claim that the requested reports are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted reports.

Initially, we note that the submitted reports are subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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). Pursuant to section 552.022(a)(1), the sheriff's office may only withhold the submitted reports if they are confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Although you argue that the reports are excepted under section 552.103 of the Government Code, this section is a discretionary exception and, as such, is not "other law" for purposes of section 552.022. *See 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); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver). Therefore, the submitted reports may not be withheld under section 552.103 of the Government Code.

We note, however, that the submitted incident report contains information that is excepted from disclosure under sections 552.130 and 552.147 of the Government Code.¹ Section 552.130 provides in part:

(a) Information is excepted from the requirements of Section 552.021 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[.]

Gov't Code § 552.130(a). We note that this provision does not protect out-of-state motor vehicle record information. We further note that the purpose of section 552.130 is to protect an individual's privacy interests. Since the right of privacy lapses at death, Texas motor vehicle record information that pertains 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). We have reviewed the submitted incident report and marked the Texas motor vehicle record information that must be withheld under section 552.130.

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. We have reviewed

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.130 and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Furthermore, sections 552.130 and 552.147 constitute "other law" for purposes of section 552.022 of the Government Code.

the submitted incident report and marked the social security numbers that must be withheld pursuant to section 552.147.²

In summary, the sheriff's office must withhold the Texas motor vehicle record information and social security numbers we have marked under sections 552.130 and 552.147 of the Government Code, respectively. The remainder of the submitted incident report, along with the autopsy report, must be released to the requestor pursuant to section 552.022 of the Government Code.

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).

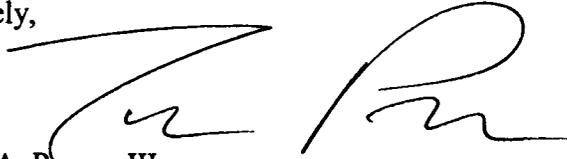
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²We 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.

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,

A handwritten signature in black ink, appearing to read 'JAP', written over a horizontal line.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 260985

Enc. Submitted documents

c: Mr. Howard E. Williams
2730 Handler Hollow
San Marcos, Texas 78666
(w/o enclosures)