



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2006

Lieutenant Oscar J. Garcia
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2006-12120

Dear Lieutenant Garcia:

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# 261961.

The McAllen Police Department (the "department") received a request for a specified police report pertaining to the death of a named individual. You state that the department will release basic information to the requestor. You claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code 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 the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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[.]

Gov't Code § 552.108(a)-(b). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. 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). You state that the submitted report pertains to a ongoing investigation. However, you also state that "the circumstances of the case do not allow for a final disposition of conviction or deferred adjudication" and we note that the suspect in the case is now deceased. Based on your arguments and our review of the submitted information, it is unclear whether the case is open or closed. Thus, we determine that you have failed to adequately demonstrate either that the case is pending and is thus excepted under section 552.108(a)(1) or section 552.108(b)(1) or that the case has reached some final result other than conviction or deferred adjudication and is thus excepted under section 552.108(a)(2) or section 552.108(b)(2). Therefore, the department may not withhold the submitted information under section 552.108.

We note, however, that the submitted records contain information that may be excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175 applies to peace officers¹ and provides in pertinent part:

¹ "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). This provision allows a peace officer who is not employed by the department to elect to restrict access to his home address and telephone number, social security number, and family member information. In this case, the submitted records indicate that the individual at issue is a reserve officer with the Mission Police Department. Thus, to the extent the information we have marked relates to a currently licensed peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the information that we have marked must be withheld from disclosure under section 552.1175.

The remaining information also includes Texas motor vehicle record information. Section 552.130 of the Government Code provides the following:

(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, however, that the purpose of section 552.130 is to protect the privacy interests of individuals. Since the right of privacy lapses at death, Texas motor vehicle record information that pertains to the deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Thus, the department may not withhold the Texas driver's license number of the deceased. The submitted information may also contain Texas motor vehicle record information pertaining to the deceased individual's vehicle. If a living individual has an ownership interest in the

deceased's vehicle, then the department must withhold the Texas motor vehicle record information at issue under section 552.130 of the Government Code. If no living individual has an ownership interest in the vehicle, then the information at issue is not excepted from disclosure under section 552.130 of the Government Code and may not be withheld on this basis. Accordingly, the department must withhold only the Texas motor vehicle record information that pertains to a living individual under section 552.130 of the Government Code.

Finally, we note that the remaining 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 we have marked in the submitted information under section 552.147.²

In summary, to the extent the information we have marked relates to a currently licensed peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code. The department must also withhold the Texas motor vehicle record information that pertains to a living individual under section 552.130, and the marked 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

² 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.

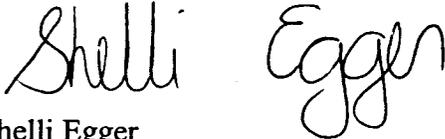
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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).

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 cursive script that reads "Shelli Egger". The signature is written in black ink and is positioned above the typed name and title.

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 261961

Enc. Submitted documents

c: Ms. Becky Garza
SWBC
P.O. Box 795027
San Antonio, Texas 78279
(w/o enclosures)