



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2007

Mr. Nathan C. Barrow
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-03000

Dear Mr. Barrow:

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# 273754.

The Fort Worth Police Department (the "department") received a request for information related to the death of a named individual. You state that the department will release some of the requested information but claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state that some the requested information may be subject to third party privacy interests. Thus, pursuant to section 552.304 of the Government Code, you have notified the deceased individual's family of the request and of their right to submit arguments to this office as to why the information should *not* be released. *See* Gov't Code § 552.304. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's claim that the requested information must be released under rule 194.2(i) of the Texas Rules of Civil Procedure. Rule 194.2 governs the production of witness statements during the discovery process. We note, however, that discovery procedures and requests made under the Act are two disparate processes. *See* Attorney General Opinion JM-1048 at 3 (1989) (stating that the fundamental purposes of the Act and of civil discovery provisions differ); Open Records Decision No. 551 (1990) at 3-4 (discussion of relation of Act to discovery process). The discovery process is a process through which parties to litigation can obtain information pertaining to the litigation. A public information request under the Act is a process in which any individual may request

information from a governmental body. Thus, the discovery process has no bearing on the availability of information requested under Act.

Next, we address the requestor's contention that the requested information must be released because it consists of a completed investigation. Section 552.022 of the Government Code provides in part 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). In this instance, the submitted information is part of a completed investigation made by and for the department. This information must be released under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. However, section 552.101 of the Government Code is "other law" for purposes of section 552.022. Therefore, we will consider the department's arguments under this exception.

We turn now to the arguments raised by the department. 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. Section 552.101 encompasses information protected by other statutes. section 1703.306 of the Occupations Code, which governs information obtained in the course of conducting a polygraph examination and provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain categories of people. Occ. Code § 1703.306(a). The information submitted as Exhibit C consists of information from a polygraph examination. The requestor does not fall within any of the enumerated categories; therefore, the department must withhold Exhibit C under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

The department also claims that the remaining information may implicate the privacy interests of the decedent's family. Section 552.101 also encompasses common law privacy. Common law privacy protects information if: (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 state 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 remaining information. 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 remaining information.

We note that the submitted photographs contain Texas license plate numbers. Section 552.130 of the Government Code excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state.¹ Gov't Code § 552.130. We note, however, that because this exception protects personal privacy, information that relates only to a deceased individual or a deceased individual's vehicle may not be withheld under section 552.130. Thus, the department must withhold the portions of the photographs that reveal Texas motor vehicle record information to the extent that such information relates to a vehicle in which a living individual owns an interest.

In summary, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. To the extent the license plate numbers depicted in the submitted photographs pertain to vehicles in which a living individual owns an interest, they must be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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

¹The Office of the Attorney General will raise mandatory exceptions like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eb

Ref: ID# 273754

Enc. Submitted documents

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