



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 27, 2008

Ms. Zindia Thomas  
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Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2008-08754

Dear Ms. Thomas:

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# 314227.

The Office of the Attorney General (the "OAG") received a request for records relating to the murder of January Lawson Brockway. The OAG asserts the information is excepted from disclosure pursuant to sections 552.101, 552.108, 552.130, 552.132, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered and reviewed the submitted arguments and representative sample of documents.<sup>2</sup>

First, the OAG seeks to withhold Exhibit B under section 552.108. Section 552.108 of the Government Code provides in relevant part as follows:

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<sup>1</sup>The OAG states it will withhold the social security numbers of living persons pursuant to section 552.147(b), which 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.

<sup>2</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). 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); Open Records Decision No. 434 at 2-3 (1986). Because the requested records involve a particular criminal matter and are not internal records, section 552.108(a)(4) is the apposite exception in this instance, not section 552.108(b)(3).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and held that "the decision as to what to include in [the file], necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Id* at 380. (quoting *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). Accordingly, the court

concluded that in such an instance, the district attorney's entire litigation file is privileged attorney work product. The OAG argues the request seeks the prosecutor's entire criminal litigation file and states the file reflects the prosecutor's mental impressions, opinions, legal theories, and conclusions. Based on these representations and our review of the information, we agree Exhibit B is excepted under section 552.108(a)(4) in conjunction with *Curry*.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, the OAG may withhold Exhibit B from disclosure based on section 552.108(a)(4).<sup>3</sup>

Next, the OAG contends it must withhold Exhibit C in its entirety from public disclosure pursuant to section 552.132 of the Government Code. Section 552.132 provides in pertinent part as follows:

(a) . . . , in this section, "crime victim or claimant" means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Gov't Code § 552.132. Article 56.32 of the Code of Criminal Procedure defines "claimant" as

any of the following individuals who is entitled to file or has filed a claim for compensation under this subchapter:

(A) an authorized individual acting on behalf of a victim;

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<sup>3</sup>Because section 552.108(a)(4) is dispositive, we do not address the OAG's other arguments for Exhibit B.

...

(C) a dependent of a victim who died as a result of criminally injurious conduct; [or]

...

(E) an authorized individual acting on behalf of an individual who is described by Subdivision (C) or (D) and who is a child.

Crim. Proc. Code art. 56.32(a)(2). Exhibit C contains four claimants: the person who filed the claim and the deceased victim's dependents who are entitled to file a claim. When a crime victim or claimant is awarded compensation, section 552.132(c) requires the release of the crime victim's or claimant's name and the amount of compensation awarded. *Id.* Because the information shows the claimants received compensation, the OAG must release the four claimants' names and award amounts. As for the remaining information, the OAG argues it must withhold all of the information because the requestor knows the identity of "the claimant." It appears the OAG's reference to "claimant" is the person who filed the claim. However, nothing in the request letter or the submitted information indicates the requestor knows the identity of this person. Accordingly, the OAG may not withhold all of Exhibit C. Rather, the OAG must withhold the claimants' identifying information we marked pursuant to section 552.132 of the Government Code.

The remaining information in Exhibit C contains confidential claim information that the OAG must not release under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. The regulations found at section 603 of title 20 of the Code of Federal Regulations send a clear message that "claim information" in the files of a state unemployment compensation agency is to be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies, such as Texas Workforce Commission (the "commission"), must protect the confidentiality of claim information. "Claim information" means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as "[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits." 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of "claim information" and that the federal regulations prohibit the

commission from disclosing this information. See Open Records Decision No. 476 at 4 (1987).

The federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the "department") in administering state unemployment insurance ("UI") programs and that a department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. UIPL No. 34-97 states

This confidentiality requirement pertains to information required from individuals and employers or employing units for the purposes of administration of the revenue and benefit provisions of State UC laws. This UIPL applies to State UC agencies and the entire executive branch of State government.

The commission maintains the claim information at issue as part of its administration of the state unemployment compensation program. We agree the information at issue is confidential claim information that the commission released to the OAG.

UIPL No. 34-97 permits the commission to release confidential claim information to state public officials in the administration or enforcement of a law by the public official so long as the public official continues to safeguard the confidentiality of the records. Here, the commission determined the information was necessary for the administration or enforcement of laws under the OAG's purview and executed a confidentiality agreement with the OAG. Thus, the OAG must withhold the information we have marked in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with these federal provisions.

The fingerprints in Exhibits C and D are biometric identifiers that are confidential under section 560.003 of the Government Code. Gov't Code § 560.003. "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry. *Id.* § 560.001. Therefore, the OAG must withhold the fingerprints in Exhibits C and D under section 560.003.

In addition, the OAG asserts Exhibit D contains information made confidential by section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the documents the OAG marked were used or developed in an investigation of child abuse, the documents are confidential pursuant to section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the OAG must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that some kinds of medical information and information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the private information that the OAG must withhold in Exhibit D.

Section 552.130 excepts from public disclosure information relating to a Texas driver's license or motor vehicle title or registration. The OAG must withhold the Texas motor vehicle information it and we have marked under section 552.130. However, this provision was enacted to protect the privacy of an individual, and therefore, the protection extinguishes upon the individual's death. *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.) (because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded."); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d). Thus, the OAG may not withhold the deceased victim's motor vehicle information under section 552.130.

Section 552.136 of the Government Code 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." Gov't

Code § 552.136. An access device is one that may be used to obtain money, goods, or services. *Id.* The OAG must, therefore, withhold the bank account and routing numbers we marked under section 552.136.

Section 552.137 of the Government Code requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Gov't Code § 552.137(a), (b). Because the OAG states the individuals at issue have not affirmatively consented to the release of their e-mail addresses, the OAG must withhold all but one of the private e-mail addresses it marked pursuant to section 552.137. Section 552.137 does not apply to an e-mail address of an employee of a governmental body; thus, the OAG must release the e-mail address we marked.

In summary, the OAG must withhold 1) the information it marked under section 261.201 of the Family Code, 2) the fingerprints under section 560.003 of the Government Code; 3) the information we marked under common-law privacy; 4) the Texas motor vehicle information it and we marked under section 552.130; 5) the bank account and routing numbers we marked under section 552.136; 6) the claimants' identifying information we marked from Exhibit C under section 552.132; and 7) all but one of the e-mail addresses it marked under section 552.137. In addition, with the exception of basic information, the OAG may withhold Exhibit B under section 552.108(a)(4). The OAG must release the rest.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 314227

Enc. Marked documents

c: Ms. Christie Lawson  
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(w/o enclosures)