



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2008

Ms. Julie V. Pandya
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2008-12804

Dear Ms. Pandya:

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# 322024.

The City of Waco (the "city") received a request for copies of police reports, blood alcohol test results, scene photos, scene diagram and measurements and narrative reports from investigating officers for a specified incident. You state that you will release some of the requested information, including the full accident report. You state that you will redact the social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted 911 CAD report was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-11340 (2008). We have no indication that the law, facts, and circumstances on which the prior ruling concerning this information was based have changed. Therefore, the city must continue to rely Open Records Letter No. 2008-11340 as a previous determination and

¹Section 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.

withhold or release the 911 CAD report in accordance with the prior ruling.² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments for the remaining information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses common-law privacy. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You state that the submitted photographs of the deceased are protected by common-law privacy. We note, however, that because it is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). The United States Supreme Court has determined, however, 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 deceased individual’s parents of the request and of their right to assert a privacy interest in the submitted death scene photographs.³ In this instance, the parents have asserted a privacy interest in the release of the death scene photographs of their son. After reviewing the parents’ comments, and the submitted information, we find that the parents’ privacy interest in the photographs of their deceased son outweighs the public’s interest in the disclosure of this information. Thus, the city must withhold the submitted image files’ 08-10904-AMA-0135.jpg through 08-10904-

²We note that we previously ruled upon most if not all of the submitted information in our previous ruling, Open Records Letter No. 2008-11340, in which we found that section 552.108(a)(1) excepted most of the information at issue from disclosure based on a pending criminal investigation. As you no longer raise section 552.108, nor do you seek to rely on the earlier ruling as a previous determination, we assume that the circumstances have changed since the issuance of the prior ruling. Accordingly, you may no longer rely on Open Records Letter No. 2008-11340 as a previous determination for the remaining submitted information. See ORD 673 (describing the four criteria for a “previous determination”).

³See Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

AMA-0140.jpg under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We note that section 552.130 does not encompass motor vehicle record information that pertains exclusively to a deceased individual. *See* Open Records Decision No. 272 (1981). In accordance with section 552.130 of the Government Code, the city must withhold the Texas motor vehicle record information we have marked. The city must also withhold the license plate numbers in the photographs contained in the submitted CD under section 552.130; however, if the city is unable to redact this information from the submitted photographs, then the photographs containing license plates must be withheld in their entirety pursuant to section 552.130.

In summary, the city must continue to rely Open Records Letter No. 2008-11340 as a previous determination and withhold or release the 911 CAD report in accordance with the prior ruling. The city must withhold the submitted image files 08-10904-AMA-0135.jpg through 08-10904-AMA-0140.jpg under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the Texas motor vehicle record information we have marked. The city must also withhold the license plate numbers from the submitted photographs contained in the submitted CD under section 552.130; however, the city must withhold the photographs containing license plates in their entirety if it is unable to redact the portion of the photographs that reveals the license plate information. The remaining submitted information must be released to the requestor.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 322024

Enc. Submitted documents

c: Mr. John C. Craft
P.O. Box 20547
Waco, Texas 76702
(w/o enclosures)