



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-03411

Dear Mr. Mann:

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# 338980 (GCA09-0038, GCA09-0039, and GCA09-0073).

The City of Garland (the "city") received three requests for information related to the death of a specified individual. You inform us that the city has released certain information to the requestors. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that two of the requests specifically asked for the deceased individual's autopsy report. You inform this office that, as of the date of the request, the city had not yet received this autopsy report. The Act is applicable to "public information." Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" means "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Based on your representation that the city did not maintain the autopsy report at the time of the request, we conclude that this portion of the requested information does not constitute "public information" and is accordingly not subject to the Act. Therefore, this ruling does not address this portion of the requested information.

We next address your arguments against disclosure of the submitted information. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information marked in red and the submitted photographs relate to a pending criminal investigation. Based on this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

As you note, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state the city has already released, the city may withhold the submitted information marked in red and the submitted photographs under section 552.108(a)(1) of the Government Code.¹

The remaining submitted information contains Texas license plate numbers. You assert that these numbers are confidential under section 552.130 of the Government Code, which excepts from disclosure information related 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. *See* Gov’t Code § 552.130(a)(1), (2). However, we note that section 552.130 protects privacy interests and privacy is a purely personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, *writ ref’d n.r.e.*); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Thus, motor vehicle record information pertaining to a deceased individual may not be withheld under section 552.130. Accordingly, to the extent the Texas motor vehicle record information we have marked pertains to living individuals, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it pertains to a deceased individual.

¹As our ruling is dispositive with regard to this information, we need not address your argument under section 552.103 of the Government Code, except to note that basic information is generally not excepted from public disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

In summary, the city: (1) may withhold the information you have marked under section 552.108(a)(1) of the Government Code, (2) must withhold the information you have marked under section 552.130 of the Government Code, to the extent that such information pertains to living individuals, and (3) must release the remainder of the submitted information to the requestors.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 338980

Enc. Submitted documents

cc: 2 Requestors
(w/o enclosures)