



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2009

Sheriff Kenneth Hammack
Polk County Sheriff's Office
1733 North Washington
Livingston, Texas 77351

OR2009-05101

Dear Sheriff Hammack:

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# 340362.

The Polk County Sheriff's Office (the "sheriff") received a request for a specified case report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

We initially note that the requestor identifies herself as a research assistant for the Division of Workers' Compensation of the Texas Department of Insurance. The requestor states that she seeks access to the requested information in connection with a Census of Fatal Occupational Injuries conducted in cooperation with the Bureau of Labor Statistics of the U.S. Department of Labor. Accordingly, the sheriff has the discretion to release the requested information to this requestor pursuant to an intergovernmental transfer. This office ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Act, as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713

¹We note you have redacted social security numbers from the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

(1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has concluded that information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). Thus, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information. *See* ORD 655 at 8. Accordingly, the sheriff would have the discretion to release the requested information to this requestor even if the information is confidential. However, should the sheriff decline to exercise that discretion, he must nonetheless adhere to the following decision regarding the applicability of the claimed exception to the requested information.

Section 552.108 provides in pertinent 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; [or]

(2) it is information that 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; [or]

(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)(1)-(2), (b)(1)-(2). 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). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 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, subsections 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 the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your comments to this office, you cite the language from subsections 552.108(a)(2) and 552.108(b)(2). As previously stated, these sections pertain to concluded criminal investigations that did not result in convictions or deferred adjudication. You state, however, the submitted incident report pertains to a pending criminal case by the Polk County District Attorney's Office. Therefore, because of these contradictory assertions, we find the sheriff has failed to demonstrate the submitted incident report relates to a concluded investigation that did not result in a conviction or deferred adjudication. Consequently, the sheriff may not withhold the submitted incident report under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code.

Section 552.1175 of the Government Code provides, in relevant part:

(b) Information that relates to the home address, home telephone number, or social security number of [a former Texas Department of Criminal Justice employee], 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).² Because the protection afforded by section 552.1175 includes "current or former" employees of the Texas Department of Criminal Justice, the protection does not lapse at death. Therefore, to the extent that the individuals whose information we have marked elected to restrict access to their information in accordance with section 552.1175(b), the sheriff must withhold the information we marked under section 552.1175. Otherwise, the sheriff must release the information.

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(a). We note that section 552.130 protects privacy interests. Privacy is a purely personal right that lapses at death. *See Moore*, 589 S.W.2d at 497; Open Records Decision No. 272 (1981). Thus, the deceased individual's Texas driver's license number may not be withheld under this exception. However, if a living individual owns an interest in the vehicle owned by the deceased, then the sheriff must withhold the information we have marked, pertaining to that vehicle, under section 552.130 of the Government Code. In addition, the sheriff must withhold the remaining Texas motor vehicle record information we have marked, pertaining exclusively to living individuals, under section 552.130 of the Government Code.

In summary, to the extent that the individuals whose information we have marked elected to restrict access to their information in accordance with section 552.1175(b), then the sheriff must withhold the information we have marked under section 552.1175. If a living individual owns an interest in the vehicle owned by the deceased, then the sheriff must withhold the information we have marked, pertaining to that vehicle, under section 552.130 of the Government Code. In addition, the sheriff must withhold the remaining Texas motor vehicle record information we have marked, pertaining exclusively to living individuals, under section 552.130 of the Government Code. The remaining information must be released.

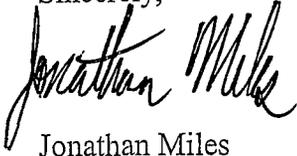
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²The Office of the Attorney General will raise a mandatory exception such as section 552.1175 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 340362

Enc. Submitted documents

c: Requestor
(w/o enclosures)