



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2009

Ms. Julie Pandya
Assistant City Attorney
City of Cedar Park
600 N. Bell Boulevard
Cedar Park, Texas 78613

OR2009-08850

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# 347390.

The City of Cedar Park (the "city") received a request for information pertaining to a specified motor vehicle accident. You state you will make the basic information and the CR-3 crash report pertaining to the accident at issue available to the requestor. *See* Transp. Code § 550.065(c)(4) (providing for release of officer's crash report). You state you are redacting social security numbers in accordance with section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 773.091 of the Health and Safety Code provides in relevant part as follows:

¹Section 552.147(b) 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. Gov't Code § 552.147.

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). You assert the highlighted portions of the information in Exhibit D are confidential under chapter 773. Upon review, we conclude that the information in Exhibit D consists of EMS records for the purposes of chapter 773 of the Health & Safety Code, and that the highlighted portions of this report are confidential under section 773.091(b). Accordingly, the city must generally withhold the highlighted portions of the information in Exhibit D pursuant to section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. However, the requestor in this instance may be the authorized representative of the persons to whom the EMS records pertain; thus, she may have a right of access to the marked EMS records. We note records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information.” *Id.* §§ 773.092(e)(4), .093. Among the individuals authorized to act on the patient’s behalf in providing written consent is a “personal representative” if the patient is deceased. *Id.* Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. Thus, the marked EMS records may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.093.

You also assert the marked portions of the submitted police report and photographs are excepted from disclosure under section 552.108(a)(1) of the Government Code. This section 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 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 have provided a memorandum from the Cedar Park Police Department stating that the submitted police report is open and under review by the Williamson County District Attorney’s Office. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Based on this representation, we conclude that the release of the information you marked 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. Civ. 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 acknowledge, 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*. See 531 S.W.2d at 186-88. We note that some of the information you have marked under section 552.108, including a detailed description of the offense in the narrative portion of the report, constitutes basic information for purposes of *Houston Chronicle*. Thus, with the exception of a detailed description of the offense, the city may withhold the information you have marked under section 552.108.²

Finally, you assert some of the remaining submitted information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a driver's license or permit issued by an agency of this state. See Gov't Code § 552.130(a)(1). We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. See *Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, *writ ref'd n.r.e.*) (Texas does not recognize relational or derivative right of privacy); see also Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). One of the Texas driver's license numbers you marked pertains to a deceased individual. Therefore, the city may not withhold this number, which we have identified, under section 552.130 of the Government Code. The remaining Texas motor vehicle record information you marked, however, must be withheld under section 552.130.

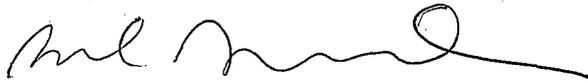
In summary, the city may only release the highlighted information in Exhibit D in accordance with chapter 773 of the Health and Safety Code. With the exception of a detailed description of the offense, the city may withhold the portions of the police report you marked under section 552.108(a)(1). With the exception of the Texas driver's license number that pertains to a deceased individual, the city must withhold the Texas motor vehicle information you marked under section 552.130. 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.

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 347390

Enc. Submitted documents

cc: Requestor
(w/o enclosures)