



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2009

Mr. Jason E. Moody
Public Information Officer
Cameron County District Attorney's Office
974 East Harrison
Brownsville, Texas 78520

OR2009-10421

Dear Mr. Moody:

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# 350548.

The Cameron County District Attorney's Office (the "district attorney") received a request for the police report and any narratives pertaining to the death of a named individual. You state you have released basic information to the requestor. *See* Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample information.¹

This request for information seeks the police report and any narratives related to the death of the named individual. The information submitted as Tab K consists of documents and communications related to the district attorney's investigation into this death. You do not inform this office, and it is not clear based on the submitted documents, that the information

¹We 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.

submitted in Tab K is contained in any police report or narrative. Therefore, we conclude the information in Tab K is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney is not required to release the information in Tab K, which we have marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).²

You assert the responsive information is excepted from disclosure under sections 552.108(a)(1) and 552.108(b)(1) of the Government Code. Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Id. § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). One way a governmental body can establish the applicability of section 552.108(a)(1) is by informing this office that the requested information relates to an open or pending criminal investigation or prosecution. You do not inform this office, however, that the information at issue relates to any open or pending criminal investigation or prosecution. Further, some of the submitted documents state that the police and district attorney investigations into the specified death are closed. You also do not otherwise explain how release of the information at issue would otherwise interfere with law enforcement. Accordingly, we conclude you have failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(b)(1) to the submitted information. Therefore, the district attorney may not withhold any of the responsive information under section 552.108.

²As our ruling is dispositive for this information, we need not address your argument against its disclosure under section 552.111 of the Government Code.

You next assert the personal witness information, business records of the deceased, and law enforcement reports within the responsive information are excepted from disclosure under section 552.101 of the Government Code.³ This section excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Although you generally assert the personal witness information, business records, and law enforcement reports are confidential, you do not identify any information that is made confidential by statute. *See* Gov’t Code § 552.301 (governmental body seeking to withhold information must submit the information, labeled to indicate which exceptions apply to which parts of the information, along with arguments explaining the applicability of claimed exceptions). Further, we are not aware of any statutory provisions which make this information confidential. However, we consider your assertion that this information is made confidential pursuant to the doctrine of common-law privacy.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body may in certain instances be protected by common-law privacy. *See* Open Records Decision Nos. 523 (1989), 373 (1983). One of the witness statements you seek to withhold under section 552.101 contains financial information of the deceased individual. Because a person’s right to privacy lapses on the person’s death, the district attorney may not withhold any of the decedent’s financial information on the basis of privacy. *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981).

One of the submitted witness statements also contains personal financial information of living individuals. This statement is part of a police file investigating individuals’ potential involvement in criminal activity. The public has a legitimate interest in knowing the general details of a criminal investigation and how such investigations are conducted. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (public’s legitimate interest in community affairs is particularly sensitive and important as applied to police activity). Thus, we conclude the public generally has a legitimate interest in this information and none of the

³Although you also assert medical records are confidential, the submitted information does not contain any medical records.

witness statements may be withheld under section 552.101 in conjunction with common-law privacy.

Some of the remaining responsive information is excepted from disclosure pursuant to section 552.130 of the Government Code.⁴ 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). Section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy); see also Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, pursuant to section 552.130, the district attorney must withhold the Texas motor vehicle information we marked in the submitted documents. The remaining information must be released.⁵

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note that the submitted information contains a social security number. Section 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.

Ref: ID# 350548

Enc. Submitted documents

cc: Requestor
(w/o enclosures)