



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2013

Deputy Danny Daniel
Erath County Sheriff's Department
1043 Glen Rose Highway
Stephenville, Texas 76401

OR2013-07241

Dear Deputy Daniel:

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# 486086.

The Erath County Sheriff's Department (the "sheriff's department") received a request for any documents regarding a specified arrest and murder investigation. You inform us the sheriff's department has released some of the requested information. You indicate you have redacted a social security number under section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the sheriff's department seeks to withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions

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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

²Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the sheriff's department may not withhold the court-filed documents we have marked under section 552.108 of the Government Code. However, because section 552.130 of the Government Code makes information confidential under the Act, we will address its applicability to the court-filed documents subject to section 552.022(a)(17).

We first address your arguments against disclosure of the submitted information not subject to section 552.022(a)(17). You raise section 552.108(a)(1) of the Government Code for this information. This exception 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the submitted information pertains to an active criminal investigation. Based on your representation and our review, we conclude release of the information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we agree section 552.108(a)(1) of the Government Code is applicable to this information.

However, 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Basic information must be released even if it does not literally appear on the front page of an offense or arrest report. *See* ORD 127 at 3-4. We note, however, basic information does not include driver's license information. *See id.* Thus, with the exception of basic information, which must be released, the sheriff's department may withhold the submitted information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code.³

We next address the submitted court-filed documents subject to section 552.022(a)(17). Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, *writ ref'd n.r.e.*); *see also* Attorney General Opinions JM-229 (1984) ("the right of privacy

³As our ruling for this information is dispositive, we need not address your remaining argument against its release.

lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find the sheriff’s department must withhold the driver’s license information we have marked under section 552.130(a)(1) of the Government Code. We have also marked the license plate information of various vehicles. If a living person owns an interest in these vehicles, the sheriff’s department must withhold the marked information pertaining to the vehicles at issue under section 552.130(a)(2) of the Government Code. If no living person owns an interest in these vehicles, the sheriff’s department may not withhold the marked information pertaining to these vehicles on that basis.

In summary, with the exception of basic information, which must be released, the sheriff’s department may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code. With respect to the court-filed documents we have marked under section 552.022(a)(17) of the Government Code, the sheriff’s department must withhold the driver’s licence information we have marked under section 552.130(a)(1) of the Government Code. In addition, if a living person owns an interest in the vehicles at issue, the sheriff’s department must withhold the license plate information we have marked pertaining to these vehicles under section 552.130(a)(2) of the Government Code. If no living person owns an interest in the vehicles at issue, the sheriff’s department may not withhold the marked information pertaining to these vehicles on that basis. As no further exceptions to disclosure are raised for the remaining information, the sheriff’s department must release it.

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, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 486086

Enc. Submitted documents

c: Requestor
(w/o enclosures)