



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2014

Ms. Anne Marie P. Hillis
Civil Section
Bexar County Criminal District Attorney
300 Dolorosa, 5th Floor
San Antonio, Texas 78205

OR2014-01999

Dear Ms. Hillis:

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# 512829.

The Bexar County Sheriff's Office (the "sheriff's office") received a request for a specified incident report related to the death of a named individual. You claim 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 representative sample of information.²

Initially, we note some of the information at issue may have been previously released to the requestor. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007; *Open Records Decision No. 518 at 3 (1989)*; *see also Open Records Decision No. 400 (1983)* (governmental body may waive right to claim permissive exceptions to disclosure

¹Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the information at issue. *See Gov't Code* §§ 552.301, .302.

²We assume 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.

under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the sheriff's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the sheriff's office may not now withhold any previously released information under section 552.108. However, we will address your argument under section 552.108 for the information that was not previously released.

Section 552.108 of the Government Code provides in 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:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The information you have submitted consists of sheriff's office offense reports related to the death of the named individual. We find you have failed to demonstrate how this information either was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Thus, we conclude the sheriff's office may not withhold any of the information at issue under subsections 552.108(a)(4) or (b)(3) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, date of birth, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.³ *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). Upon review, we find the sheriff's office must withhold the information we have marked under section 552.1175 if the individual to whom this information pertains is currently a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. However, the sheriff's office may not withhold the information we have marked under section 552.1175 if the individual is not currently a licensed peace officer, or no election is made.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a). 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., 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 (1981). Upon review, we find the sheriff's office must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we note some of the motor vehicle record information at issue relates to a vehicle owned by the named individual, who is now deceased. If a living individual owns an interest in this vehicle, the sheriff's

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

office must withhold this information under section 552.130. If no living individual owns an interest in this vehicle, then the marked information relating to that vehicle is not excepted from disclosure and must be released.

In summary, the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code if the individual to whom this information pertains is currently a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. However, the information pertaining to the vehicle owned by the deceased individual may only be withheld if a living individual owns an interest in the vehicle. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 512829

Enc. Submitted documents

c: Requestor
(w/o enclosures)