



January 28, 2015

Mr. G. Brian Garrison
Assistant District Attorney
Dallas County District Attorney's Office
Frank Crowley Courts Building
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2015-01678

Dear Mr. Garrison:

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# 550018.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for 92 categories of information related to a specified cause number. You claim the submitted information is excepted from disclosure under sections 552.027, 552.101, 552.108, 552.1085, 552.111, 552.1175, 552.130, 552.132, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, portions of which consist of representative samples.¹

Initially, we understand you to contend some of the information at issue consists of records of a grand jury that is not subject to the Act. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive

¹We assume that the "representative samples" of records submitted to this office are 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.

possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the district attorney's office holds the information at issue as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the district attorney's office is not required to release that information in response to the instant request. To the extent the district attorney's office does not hold the information at issue as an agent of the grand jury, we will address your arguments against its disclosure.

Next, you contend the district attorney's office is not required to release some of the information at issue, because this information is commercially available. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. You assert the information in Items 66 and 67 is available through commercial means. You explain the information consists of transcripts that "can likely be acquired from the company that recorded and produced the transcripts." Upon review, we find you have failed to demonstrate the information at issue came from the type of commercial book or publication purchased or acquired by a governmental body for research purposes as contemplated by section 552.027. *See id.* § 552.027(a). Therefore, the information at issue is not subject to section 552.027, and must be released unless it falls within an exception to disclosure. *Id.* §§ 552.006, .021, .301, .302.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The submitted information consists of a completed investigation subject to section 552.022(a)(1). The district attorney's office must release the submitted information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for the submitted information, we note section 552.111 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). As such, the district attorney's office may not withhold any portion of the submitted information under section 552.111. The attorney work product privilege, which is encompassed by section 552.111, is also found in rule 192.5 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 192.5. The Texas Supreme Court has held "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply, and the submitted information may not be withheld on that basis. However, because sections 552.101, 552.1085, 552.1175, 552.130, 552.132, and 552.137 of the Government Code make information confidential under the Act, we will address the applicability of these exceptions to the submitted information.² Additionally, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under section 552.108.

Section 552.108 of the Government Code states in pertinent part the following:

(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:

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(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 the requirements of Section 552.021 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 claiming 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.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." 873 S.W.2d at 380. However, a party is not prevented from requesting specific documents or categories of documents relevant to issues in a pending case, even though some or all of the documents may be contained in an attorney's files. *National Union*, 863 S.W.2d at 461.

You claim the instant request for information seeks the district attorney's office's entire prosecution file for the specified case. We disagree the requestor seeks the entire prosecution file. Rather, the requestor seeks specific categories of information held by the district attorney's office that were made available to the defense and filed with the court in the specified case. Such a request does not constitute a request for the "entire" file. Thus, we conclude the present request is not a request for the district attorney's entire prosecution file. As a result, the district attorney's office may not withhold the information at issue under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the holding in *Curry*.

You also contend the information at issue was created or assembled in anticipation of or in the course of preparing for criminal litigation and reflects the mental impressions and legal reasoning of prosecutors in the district attorney's office. Upon review, we agree some of the submitted information reflects the mental impressions or legal reasoning of attorneys representing the state. Therefore, the district attorney's office may withhold the information we have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.³ However, we find you have failed to demonstrate how any portion of the remaining information reflects the mental processes or legal reasoning of an attorney representing the state. Accordingly, we find you have failed to demonstrate how any of the remaining information is protected by sections 552.108(a)(4) and 552.108(b)(3), and the district attorney's office may not withhold the remaining information under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as article 20.02 of the Code of Criminal Procedure, which provides "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). In construing article 20.02 of the Code of Criminal Procedure, the types of "proceedings" Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding). We note a portion of the remaining information consists of grand jury testimony. Therefore, to the extent the grand jury testimony we have marked is not held by the district attorney's office as an agent of the grand jury, we conclude the district attorney's office must withhold the grand jury testimony we have marked under section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure.⁴ However, we find no portion of the remaining information reveals grand jury testimony or deliberations of the grand jury. Therefore, we conclude the district attorney's office may not withhold any of the remaining information under section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure. *Cf.* Open Records Decision No. 513 at 4 (1988) (fact that information collected or prepared by another person or entity is submitted to grand jury does not necessarily mean that such information is confidential in possession of district attorney).

Section 552.101 of the Government Code also encompasses information protected by section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

- (a) The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and

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

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11(a). We note Items 58 and 76 consist of photographs taken during an autopsy. We note neither of the statutory exceptions to confidentiality is applicable in this instance. Upon review, we find the district attorney's office must withhold Items 58 and 76 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.⁵

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)–(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician and information obtained from those records. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we have marked consists of confidential medical records. Accordingly, the district attorney's

⁵As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.⁶

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We also note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find some of the remaining information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the district attorney’s office must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.⁷ However, no portion of the remaining information constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the district attorney’s office may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See id.* §§ 560.001 (defining “biometric identifier” to include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). We note laws making this type of information confidential are intended to protect an individual’s privacy. *See id.* § 560.003. Because the right of privacy is purely personal and lapses at death, the fingerprints of a deceased individual may not be withheld on the basis of sections 560.001, 560.002, and 560.003.

⁶As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

⁷As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

See Moore v. Charles B. Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and lapses upon death); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-67 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). We note the remaining information includes the fingerprints of living individuals. You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprints at issue. Therefore, the district attorney's office must withhold the information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.⁸ However, we find no portion of the remaining information contains information subject to section 560.003 of the Government Code, and the district attorney's office may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrines of common-law and constitutional privacy. The constitutional right to privacy protects two types of interests. *See* Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. *Id.* The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional privacy doctrine is far narrower than that under the common-law right to privacy; the material must concern the "most intimate aspects of human affairs." *See id.* at 5 (citing *Ramie*, 765 F.2d at 492).

In Open Records Decision No. 430 (1985), our office determined a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, and that right would be threatened if their names were released. *See also* Open Records Decision Nos. 428 (1985), 185 (1978) (public's right to obtain inmate's correspondence list is not sufficient to overcome First Amendment right of inmate's correspondents to maintain communication with inmate free of threat of public exposure). Furthermore, we note, the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272 at 1. However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004).

⁸As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

The remaining information includes information related to inmate visitation. The remaining information also contains photographs of a deceased individual. You inform our office the decedent's family asserts a privacy interest in the photographs at issue. Upon review, we find the family's privacy interests in these photographs outweigh the public's interest in the disclosure of this information. Therefore, the district attorney's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with constitutional privacy.⁹ However, no portion of the remaining information consists of photographs pertaining to the deceased individual or information that otherwise implicate a living individual's privacy interests for the purposes of constitutional privacy. As such, none of the remaining information may be withheld under section 552.101 on this basis.

Common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* ORD 455. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Finally, this office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. -El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). However, as noted above, the right to privacy is a

⁹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1.

Upon review, we find the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.¹⁰ However, we find no portion of the remaining information is highly intimate or embarrassing to a living individual and of no legitimate concern to the public. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1085 of the Government Code provides, in part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). Upon review, we find none of the remaining photographs consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the district attorney's office may not withhold any portion of the remaining information under section 552.1085(c) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual

¹⁰As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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.

Id. § 552.1175(a)(1), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Some of the remaining information relates to individuals who were licensed as peace officers at the time the information at issue was created. However, we are unable to determine from the information provided if the individuals at issue are currently licensed as peace officers. Thus, we must rule conditionally. Accordingly, to the extent the information at issue, which we have marked and indicated, relates to individuals who are currently licensed as peace officers and who elect to restrict access to the information in accordance with section 552.1175(b), the district attorney's office must withhold the information we have marked and indicated under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.¹¹ Conversely, if the individuals whose information is at issue are not currently licensed as peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the marked and indicated information may not be withheld under section 552.1175. However, you have failed to demonstrate how any of the remaining information is subject to section 552.1175 of the Government Code, and it may not be withheld on that basis.

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* Gov't Code § 552.130. The purpose of section 552.130 is to protect the privacy interests of individuals. As noted above, because the right of privacy lapses at death, information that pertains solely to deceased individuals may not be withheld under section 552.130 of the Government Code. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Upon review, we find the district attorney's office must withhold the motor vehicle record information relating to living individuals, which we have marked and indicated, under section 552.130 of the Government Code.¹² However, we find some of the remaining

¹¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

¹²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

information at issue consists of Texas driver's license information relating to a deceased individual. Furthermore, we find no portion of the remaining information consists of motor vehicle record information subject to section 552.130. Accordingly, none of the remaining information may be withheld under section 552.130 of the Government Code.

Section 552.132 of the Government Code provides, in relevant part, the following:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Gov't Code § 552.132(b), (d). The information at issue is held by the district attorney's office, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation any of the information at issue pertains to a victim who is an employee of the district attorney's office who made an election in accordance with section 552.132(d). Thus, the district attorney's office may not withhold any of the information at issue under section 552.132 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not of a type excluded by subsection (c). Accordingly, the district attorney's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.

In summary, to the extent the district attorney's office holds the information at issue as an agent of the grand jury, such information is not subject to disclosure under the Act and the

district attorney's office is not required to release that information in response to the instant request. To the extent the district attorney's office does not hold the information at issue as an agent of the grand jury (1) the district attorney's office may withhold the information we have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code, (2) the district attorney's office must withhold the grand jury testimony we have marked under section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure, (3) the district attorney's office must withhold Items 58 and 76 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure, (4) the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA, (5) the district attorney's office must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code, (6) the district attorney's office must withhold the information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code, (7) the district attorney's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with constitutional privacy, (8) the district attorney's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy, (9) to the extent the information which we have marked and indicated relates to individuals who are currently licensed as peace officers and who elect to restrict access to the information in accordance with section 552.1175(b), the district attorney's office must withhold the information we have marked and indicated under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service, (10) the district attorney's office must withhold the information we have marked and indicated under section 552.130 of the Government Code, (11) the district attorney's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release, and (12) the district attorney's office must release the remaining information.¹³

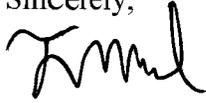
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹³We note the remaining information contains social security numbers; however, one of the social security numbers belongs to a deceased individual. Although 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, this section does not apply to the social security number of a deceased individual. Gov't Code § 552.147(b). Therefore, the district attorney's office may only withhold the social security numbers of living individuals within the remaining information under section 552.147 of the Government Code.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 550018

Enc. Submitted documents

c: Requestor
(w/o enclosures)