



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2010

Mr. Joseph J. Gorfida, Jr.  
Assistant City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2010-03888

Dear Mr. Gorfida:

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# 373050 (Richardson File No. 09-951).

The Richardson Police Department (the "department") received a request for information pertaining to a specified case. You indicate the department has released some of the requested information. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from an interested party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find that the information we have marked must generally be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the requestor is the spouse of the individual to whom the marked information pertains and may have a right of access to this information. See Gov't Code § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to the marked information pursuant to section 552.023(b), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S.589,599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). 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 v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). 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*, 124 S. Ct. 1570 (2004).

Thus, because the submitted photographs relate to a deceased individual, they may not be withheld from disclosure based on his privacy interests. However, you state you notified the deceased individual's family members of the request for information and of their right to assert a privacy interest in the submitted information. In this instance, we have received a representation from a surviving family member, who also represents other surviving family

members, asserting a privacy interest in the release of the death scene photographs. After reviewing these comments, and the submitted information, we find that the family members' privacy interest in the photographs of their deceased relative outweighs the public's interest in the disclosure of this information. Thus, the department must withhold the submitted photographs we have marked under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas license plate numbers we have marked in the submitted photographs under section 552.130. The department must also generally withhold the Texas driver's license number we have marked under section 552.130. However, as noted above, the requestor appears to be the spouse of the individual whose Texas driver's license number is at issue. Section 552.130 protects privacy interests, and as her spouse's authorized representative, the requestor would have a right of access under section 552.023 to the marked Texas driver's license. Thus, if the requestor is her spouse's authorized representative, then she has a right of access to her spouse's Texas driver's license number pursuant to section 552.023, and the department may not withhold that information from her under section 552.130. To the extent the requestor is not acting as her spouse's authorized representative, the department must withhold the marked Texas driver's license number under section 552.130 of the Government Code.

In summary, the photographs we have marked must be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The Texas license plate numbers we have marked in the submitted photographs must be withheld under section 552.130 of the Government Code. To the extent the requestor is not acting as her spouse's authorized representative, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the Texas driver's license number we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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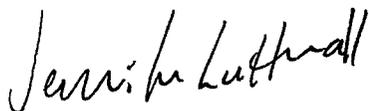
<sup>1</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>The remaining information contains social security numbers subject to section 552.147 of the Government Code. Section 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. Section 552.147 is based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to her spouse's social security number if she is acting as his authorized representative. In addition, because the requestor may have a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 373050

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Family Member of Deceased Individual  
(w/o enclosures)