



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Ms. Jenny Gravley
Taylor Olson Adkins Srala Elam, L.L.P.
For City of Joshua
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-15539

Dear Ms. Gravley:

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# 396418.

The Joshua Police Department (the "department"), which you represent, received a request for information related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of this information may implicate the privacy interests of third parties. Accordingly, you notified the third parties of this request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 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 Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. 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 that 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; Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

The United States Supreme Court has determined, however, 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). You state you have notified the decedent's family of their right to assert a privacy interest in the information at issue. However, as of the date of this decision, we have received no correspondence from the surviving family members of the decedent. Thus, we have no basis for determining that the family has a privacy interest in any of the submitted information. Therefore, the submitted information may not be withheld under section 552.101 of the Government Code on the basis of constitutional privacy.

The submitted information contains information subject to section 552.130 of the Government Code, which 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.¹ Gov't Code § 552.130(a)(1), (2). We note the submitted information contains Texas motor vehicle record information belonging to the requestor's insured party. If this requestor is acting as the authorized representative of the insured party, she has a right of access to her insured's Texas motor vehicle record information. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Accordingly, if the requestor is acting as the authorized representative of the insured, the department must withhold the Texas motor vehicle record information not belonging to the requestor's insured party, which we have marked, as well as the portions of the submitted photographs we have indicated that depict Texas motor vehicle record information not belonging to the requestor's

¹The 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).

insured party under section 552.130 of the Government Code.² If the requestor is not acting as the insured party's authorized representative, the department must withhold all the Texas motor vehicle record information we have marked, as well as the portions of the submitted photographs we have indicated that depict Texas motor vehicle record information, under section 552.130 of the Government Code. In either instance, as you raise no further exceptions against disclosure, the remaining information must be released.³

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 396418

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We 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 a Texas driver's license number and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note 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. See Gov't Code § 552.147(b).