



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2010

Ms. Janet I. Monteros  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2010-19223

Dear Ms. Monteros:

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# 403605 (CA – OP-10-404).

The El Paso County Sheriff's Office (the "sheriff") received a request for all information regarding case number 2010-01235, involving an accident in which a named individual died. You state the sheriff has released some of the requested information. You claim the submitted photographs are excepted from disclosure under section 552.101 of the Government Code, and that release of some of this information may implicate the privacy interests of the deceased individual's family. Accordingly, you notified the deceased individual's parents 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 received comments from the deceased individual's parents. 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." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes such as section 11 of article 49.25 of the Code of Criminal Procedure, which provides the following:

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 manner of death, and shall issue a death certificate . . . . The records are subject to required public disclosure in accordance with [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 Chapter 552, Government Code, 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. You represent the photographs you marked were taken during an autopsy of the deceased individual. Neither statutory exception applies in this instance. Therefore, based on your representations and our review, we agree the sheriff must withhold the submitted autopsy photographs pursuant to section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

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).

Because the submitted information relates to a deceased individual, it may not be withheld from disclosure based on her privacy interests. However, as noted above, you notified the deceased individual’s parents of the request for information and of their right to assert a

privacy interest in the submitted information. In their comments to this office, the deceased individual's parents state because the requestor is their attorney who made the request at issue on their behalf, they do not object to release of the submitted photographs in this instance. Therefore, the submitted information may not be withheld from this requestor under section 552.101 of the Government Code on the basis of constitutional privacy. As you raise no other exceptions to disclosure, the remaining submitted 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.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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 403605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)