



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2011

Ms. Jessica Sangsvang  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2011-11421

Dear Ms. Sangsvang:

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# 426215 (PIR No. W008991).

The Fort Worth Police Department (the "department") received a request for all incident, arrest, or investigation reports during a specified time period regarding a named individual, as well as all call reports during a specified time period regarding a specified address. You state the department does not have any information responsive to the request for call reports.<sup>1</sup> You claim portions of the submitted incident report are excepted from disclosure under section 552.101 of the Government Code. 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. This exception encompasses the doctrine of common-law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

You claim the information regarding the named individual you have highlighted in the submitted incident report number 11-20324 is protected under common-law privacy. Upon review, we find some of the highlighted information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the information about the named individual we have marked is generally protected under common-law privacy. We note the request states the named individual is deceased. You inform us, however, the department has been unable to confirm whether or not the named individual is deceased. The right of privacy lapses at death; thus, information may not be withheld on the basis of the privacy interests of a deceased individual. *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.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, if the department determines the named individual is deceased, the department may not withhold any of the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines the named individual is not deceased, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate, however, how the remaining information you seek to withhold is highly intimate or embarrassing. Consequently, this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you have not claimed any other exceptions to disclosure for this information, the department must release it.

You have redacted the named individual's Texas driver's license number under section 552.130 of the Government Code pursuant to the previous determination issued to the City of Fort Worth in Open Records Letter No. 2006-14726 (2006). *See Gov't Code* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). 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*, 589 S.W.2d 491; *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); ORD 272 at 1. Therefore, if the department determines the named individual is deceased, the department may not withhold the named individual's driver's license number under section 552.130 of the Government Code. If the department determines the named individual is not deceased, the department may continue to rely on the previous determination issued in Open Records Letter

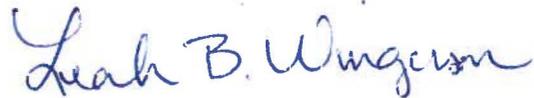
No. 2006-14726 to withhold the named individual's driver's license number under section 552.130 of the Government Code.

In summary, if the department determines the named individual is not deceased, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines the named individual is not deceased, the department may continue to rely on the previous determination issued in Open Records Letter No. 2006-14726 to withhold the named individual's driver's license number under section 552.130 of the Government Code. The department must release the remaining information.

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 426215

Enc. Submitted documents

c: Requestor  
(w/o enclosures)