



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Mr. Paul Fletcher
Langley & Banack, Inc.
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2011-13824

Dear Mr. Fletcher:

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# 432878.

The City of Eagle Pass (the "city"), which you represent, received a request for photographs taken at the scene of a named individual's death. 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 family members 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. You raise section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). Section 552.101 of the Government Code encompasses the constitutional right to privacy, which 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); 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). As you acknowledge, however, the right to privacy is a personal right that lapses at death and, therefore, does not encompass information that relates to a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 at 3 (1984), H-917 at 2 (1976); Open Records Decision No. 272 at 1 (1981).

The submitted information may not be withheld based on the privacy interests of the subject of the photographs, who is deceased. However, the United States Supreme Court has determined surviving family members can have a privacy interest in information relating to their deceased relatives. See *Favish*, 124 S. Ct. 1570. Although you state the decedent's brother has informed the city "that he does not want the photos released[.]" as of the date of this decision we have received no correspondence from the decedent's family asserting any privacy interests. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. As you raise no other exceptions to disclosure, the submitted photographs must be released to the 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, 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/agn

Ref: ID# 432878

Enc. Submitted documents

c: Requestor
(w/o enclosures)