



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2011

Mr. Greg Minton
Assistant Chief
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2011-18034

Dear Mr. Minton:

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# 438231.

The Leander Police Department (the "department") received a request for all records pertaining to the death of a named individual. You claim 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.

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." Gov't Code § 552.101. Section 552.101 encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

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 Chapter 552, Government Code, 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, § 11.¹ The submitted information contains photographs of the decedent taken during an autopsy. It does not appear that either of the statutory exceptions to confidentiality apply in this instance. Therefore, the department must withhold pictures DSC_0031 through DSC_0033 and DSC_0035 through DSC_0049 on the CD we have labeled as Disc 3. The department must also withhold all pictures except IMG_9583 on the CD we have labeled as Disc 4 under 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 of the Government Code also 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). 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.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Thus, because the remaining information relates to a deceased individual, it may not be withheld from disclosure based on her privacy interests.

However, the United States Supreme Court has determined 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 have notified the deceased individual’s family of the request and of their right to submit arguments to this office as to why the requested information should not be released. You have submitted comments from the decedent’s mother asserting a privacy interest in photographs depicting the decedent and objecting to their release. Therefore, the department must withhold pictures DSC_0002 through DSC_0013, DSC_0015, and DSC_0021 through DSC_0025 on the CD we have

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).

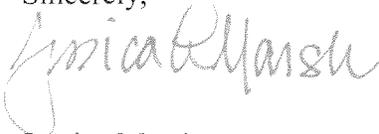
marked as Disc 3 under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The decedent's mother states she has no objection to the remaining information being released. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

In summary, the department must withhold pictures DSC_0031 through DSC_0033 and DSC_0035 through DSC_0049 on Disc 3, and all pictures except IMG_9583 on Disc 4 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The department must withhold pictures DSC_0002 through DSC_0013, DSC_0015, and DSC_0021 through DSC_0025 on Disc 3 under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The remaining 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, 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/

Ref: ID# 438231

Enc. Submitted documents

c: Requestor
(w/o enclosures)