



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2012

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2012-03928

Dear Ms. Benton:

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# 448043 (LGL-11-1819).

The Waco Police Department (the "department") received a request for information pertaining to a specified incident. You indicate you are releasing some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered 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. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, we note privacy is a personal right that lapses at death, and, thus, common-law privacy is not applicable to information that relates only to 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.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the submitted information that pertains to the deceased individual is not protected by common-law privacy and may not be withheld under section 552.101 on that basis. Upon review, we find that portions of the information at issue are highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Accordingly, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. 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,

A handwritten signature in black ink, appearing to read 'VB', followed by a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 448043

Enc. Submitted documents

c: Requestor
(w/o enclosures)