



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-11473

Dear Mr. Weir:

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# 459722 (File# W007368).

The City of San Antonio (the "city") received a request for a specified crime scene video. 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. We have also received and considered comments from interested third parties. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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. This exception 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).

Thus, because portions of the submitted video footage relate to a deceased individual, it may not be withheld from disclosure based on the deceased's privacy interests. However, you state you notified the deceased individual's family members of the request for information and of their right to assert a privacy interest in the information at issue. In this instance, we have received representations from surviving family members asserting privacy interests in the release of the information at issue. After reviewing these comments, and the information at issue, we find that the family members' privacy interests in the submitted video footage of their deceased relative outweighs the public's interest in the disclosure of this information. Thus, the city must withhold the portions of the submitted video footage we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. However, we find the family members have not demonstrated how any of the remaining information falls within the zones of privacy or otherwise implicates an individual's privacy interest for purposes of constitutional privacy. Thus, none of the remaining information may be withheld from disclosure under section 552.101 of the Government Code on the basis of constitutional privacy. As no further exceptions to disclosure have been raised, the city must release the remaining portions of the submitted video recording.

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,



Nheka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 459722

Enc. Submitted documents

c: Requestor
(w/o enclosures)