



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2012

Ms. Amy L. Currier  
Public Information Officer  
Texas Funeral Service Commission  
P.O. Box 12217  
Austin, Texas 78711

OR2012-13520

Dear Ms. Currier:

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# 463064 (TFSC Ref# 062112).

The Texas Funeral Service Commission (the "commission") received a request for a specified complaint. You state you will release most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.115 of the Government Code.<sup>1</sup> 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. This section encompasses the doctrine of common-law privacy. Common-law privacy 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 (Tex. 1976). The type 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.

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<sup>1</sup>We understand you to raise section 552.115 of the Government Code based on the substance of your arguments.

*Id.* at 683. We note the names, addresses, and telephone numbers, of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Further, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *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* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we agree the submitted funeral services agreement is highly intimate or embarrassing and of no legitimate public interest. Therefore, the commission must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

We understand you to raise section 552.115 of the Government Code for the submitted certificates of death. Section 552.115 excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 does not apply to information held by the commission, the submitted certificates of death may not be withheld on this basis.

In summary, the commission must withhold the submitted funeral services agreement, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

We understand you ask this office to issue a previous determination with regard to certificates of death held by the commission under section 552.115 of the Government Code. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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,

A handwritten signature in black ink, appearing to read 'Vanessa Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 463064

Enc. Submitted documents

c: Requestor  
(w/o enclosures)