



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2012

Ms. Judi S. Rawls
Police Administrative Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2012-16421

Dear Ms. Rawls:

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# 467801.

The Beaumont Police Department (the "department") received a request for information pertaining to a specified incident. You state the department has released or will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor asserts she was not timely notified of the department's request for a ruling from this office as required by section 552.301(d) of the Government Code. Section 552.301(d) of the Government Code requires that a governmental body must provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. The department states it received the present request for information on July 24, 2012. Thus, the department's ten-business-day deadline under

subsection 552.301(d) was August 7, 2012. The envelope in which the department sent its request for a ruling is post-marked August 7, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, the department's brief to this office contains a notation that the requestor was copied on the brief on that date. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See Open Records Decision No. 522 at 4 (1990)*. Based on the submitted information, we find the department complied with the procedural requirements of section 552.301(d) in copying the requestor on the correspondence requesting this ruling.

Section 552.101 of the Government Code exempts 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 doctrines of common-law and constitutional privacy. Common-law privacy protects information if the information (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 and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes 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. *Id.* at 683. This office has additionally determined that other types of information are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We note the names, addresses, telephone numbers, and dates of birth 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).

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently; and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). Because privacy is a personal right that lapses at death, the common-law and constitutional rights to privacy do not encompass 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.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). 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).

Upon review, you have failed to demonstrate how the dates of birth and telephone numbers you have marked are highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold the marked dates of birth or telephone numbers under section 552.101 in conjunction with common-law privacy. You also seek to withhold photographs of the deceased individual. However, because the photographs at issue relate to a deceased individual, they may not be withheld from disclosure based on his privacy interests. You indicate you notified the deceased individual's family members of the request for information and of their right to assert a privacy interest in the submitted information. As of the date of this decision, we have not received any correspondence from the family members of the deceased. Thus, we have no basis for determining those family members have any privacy interest in the submitted photographs. Therefore, the photographs of the deceased may not be withheld under section 552.101 of the Government Code on the basis of common-law or constitutional privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov't Code* § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272 at 1. Thus, section 552.130 is not applicable to the deceased individual's driver's license number and the department may not withhold it on that basis. However, we find the department must withhold the motor vehicle record information we have marked and indicated in the submitted photographs under section 552.130 of the Government Code. The remaining information you have marked does not consist of information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. Thus, the remaining information you have marked is not subject to section 552.130 and may not be withheld on that basis.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). We note section 552.147 is not applicable to the social security number of a deceased individual. Thus, section 552.147 is not applicable to the deceased individual's social security number you have marked, and the department may not withhold it on that basis.

Further, the remaining information you have marked does not consist of social security numbers and may not be withheld under section 552.147 of the Government Code.

In summary, the department must withhold the motor vehicle record information we have marked and indicated in the submitted photographs 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID#467801

Enc. Submitted documents

c: Requestor
(w/o enclosures)