



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2013

Mr. James McKechnie
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2013-14101

Dear Mr. McKechnie:

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# 496195 (City ID# 276).

The City of Wichita Falls (the "city") received a request for information regarding a specified police report. 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.

Initially, we note you have only submitted photographs for our review. To the extent any other responsive information existed when the city received the request for information, we assume any such information has been released. If such information has not been released, you must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. *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).

You seek to withhold the photographs in Exhibits 2A and 2B under common-law privacy. Upon review, we find the photographs we have indicated in Exhibit 2A are highly intimate or embarrassing and of no legitimate public concern. Therefore, the city must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining photograph in Exhibit 2A is not highly intimate or embarrassing and of no legitimate public concern. Additionally, you inform us the photographs in Exhibit 2B depict individuals who are deceased. 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). Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure of the remaining information, it 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 496195

Enc. Submitted documents

c: Requestor
(w/o enclosures)