



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2013

Mr. L. Brian Narvaez
Langley & Banack, Inc.
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2013-18163

Dear Mr. Narvaez:

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# 502932.

The Eagle Pass Police Department (the "department"), which you represent, received a request for photographs attached to a specified incident report. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of constitutional 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 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, Texas*, 765 F.2d 490 (5th Cir. 1985)).

However, we note the right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded”; therefore, it may not be asserted solely on behalf of a deceased individual. *Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). The United States Supreme Court, however, 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). You inform us you have notified the deceased individual’s family of the request for information and of their right to assert a privacy interest in the information at issue. As of the date of this decision, we have not received any correspondence from the deceased individual’s family. Thus, we have no basis for determining the family’s privacy interest in the submitted information. Therefore, the department may not withhold any of the submitted information under section 552.101 in conjunction with constitutional privacy.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

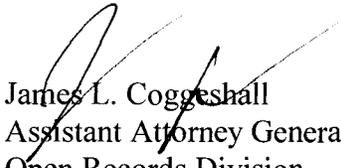
Gov’t Code § 552.130(a). Section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore* at 491; ORD 272 at 1. Accordingly, to the extent the motor vehicle information we have marked pertains to vehicles owned by living persons, the department must withhold it under section 552.130. The department may not withhold this marked information under section 552.130 if it pertains to a vehicle that is not owned by a living person. You have not established the remaining information you seek to withhold under section 552.130, including a USDOT number and a TxDOT number (now a TxDMV number), relates to motor vehicle record information or a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. *See id.* Therefore, the department may not withhold the remaining information under section 552.130 of the Government Code.

To conclude, the department must withhold the information we have marked under section 552.130 of the Government Code if it pertains to a vehicle owned by a living person. The department must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 502932

Enc. Submitted documents

c: Requestor
(w/o enclosures)