



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2013

Ms. Rachel L. Lindsay
Counsel for City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-21642

Dear Ms. Lindsay:

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# 509405 (City ORR# 10-8606).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to a specified incident. You claim some of 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. Additionally, you state you have notified third parties of the request. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

Initially, we note the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by

the statute. *Id.* In this instance, the requestor has provided the city with the requisite pieces of information specified by the statute. Accordingly, the city must release the submitted CR-3 accident report form we have marked to this requestor pursuant to section 550.065(c)(4).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses constitutional privacy, which 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 relating to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. 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” and the scope of information protected is narrower than that under the common-law doctrine of privacy. *Id.* at 5 (internal quotations omitted) (quoting *Ramie*, 765 F.2d at 492).

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., Inc.*, 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*, 541 U.S. 157 (2004) (holding surviving family members have a right to personal privacy with respect to their close relative’s death-scene images and such privacy interests outweigh public interest in disclosure).

You seek to withhold the submitted photographs of a deceased individual under section 552.101 in conjunction with constitutional privacy and the holding in *Favish*. As you acknowledge, the photographs at issue pertain solely to a deceased individual and may not be withheld from disclosure based on his privacy interests. However, you state, and provide documentation from a representative for the deceased individual’s family stating, the deceased individual’s family objects to disclosure of the information at issue. Upon review, we find the family’s privacy interests in the photographs of the

deceased individual outweigh the public's interest in the disclosure of this information. We therefore conclude the city must withhold the photographs depicting the deceased individual under section 552.101 in conjunction with constitutional privacy and the holding in *Favish*.¹

We note portions of the remaining information are subject to section 552.130 of the Government Code.² Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information we have marked in the submitted documents and the discernible license plate numbers and vehicle registration stickers in the remaining photographs under section 552.130 of the Government Code.³

In summary, the city must release the submitted CR-3 accident report form we have marked to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The city must withhold the photographs depicting the deceased individual under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The city must withhold the information we have marked in the submitted documents and the discernible license plate numbers and vehicle registration stickers in the remaining photographs under section 552.130 of the Government Code. The city 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

¹As our ruling is dispositive, we need not address your remaining argument under section 552.101 of the Government Code in conjunction with common-law privacy.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 509405

Enc. Submitted documents

c: Requestor
(w/o enclosures)