



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2014

Ms. Myrna S. Reingold
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2014-07505

Dear Ms. Reingold:

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# 521828.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for the reconstruction report and photographs for a specified case number. You state the sheriff's office has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1085, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹You acknowledge the sheriff's office failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request), (e) (requiring governmental body to submit within fifteen business days of receiving request for information comments explaining applicability of raised exceptions, copy of request for information, signed statement of date governmental body received request or evidence sufficient to establish date, and copy of information governmental body seeks to withhold or representative samples). Nonetheless, sections 552.101, 552.1085, and 552.130 are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the applicability of these exceptions to the submitted information, notwithstanding the sheriff's office's violation of section 552.301 in requesting this decision.

Initially, we note the request for information is for only the reconstruction report and photographs. Accordingly, the submitted incident report is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office need not release such information in response to this request.

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 information protected by other statutes, such as section 550.065 of the Transportation Code. Section 550.065 provides, except as provided by subsection (c) or subsection (e), CR-3 accident reports completed pursuant to chapter 5520 of the Transportation Code are privileged and confidential. Transp. Code § 550.065(b); *see also id.* 550.064 (officer's accident report). 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). The requestor has not provided the sheriff's office with two of the three requisite pieces of information specified by the statute. Accordingly, the sheriff's office must withhold the submitted CR-3 accident report under section 552.101 in conjunction with section 550.065(b).

Section 552.101 of the Government Code also 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 Fado 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, 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).

Some of the responsive photographs pertain to a deceased individual and may not be withheld from disclosure based on his privacy interests. However, you state 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 sheriff's office must withhold the photographs depicting the deceased individual under section 552.101 in conjunction with constitutional privacy and the ruling in *Favish*.²

Section 552.130 of the Government Code 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). However, section 552.130 is designed to protect the privacy of individuals and, as noted above, the right to privacy expires at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Upon review, we note one of the remaining photographs includes an image of the driver's license of the deceased individual; thus, the image of the deceased's driver's license may not be withheld under section 552.130. We conclude the sheriff's office must withhold the visually discernible license plates within the remaining photographs under section 552.130.

In summary, the sheriff's office must withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The sheriff's office must withhold the photographs depicting the deceased individual under section 552.101 of the Government Code in conjunction with constitutional privacy and the ruling in *Favish*. The sheriff's office must withhold the visually discernible license plates within the remaining photographs under section 552.130 of the Government Code. The sheriff's office must release the remaining responsive information.

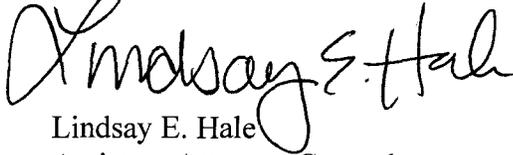
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²As our ruling is dispositive, we need not address your argument against disclosure of this information.

[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,

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/akg

Ref: ID# 521828

Enc. Submitted documents

c: Requestor
(w/o enclosures)