



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2014

Ms. Cara Leahy White
Counsel for the City of Weatherford
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-21610

Dear Ms. White:

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# 544959.

The Weatherford Police Department (the "department"), which you represent, received a request for the complete investigation file for a specified incident. You state the department will redact information pursuant to sections 552.130(c)¹ and 552.147(b)² of the Government Code and Open Records Decision No. 684 (2009).³ 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.

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."

¹Section 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. *See 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). However, section 552.130 protects privacy, which is a personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (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). Thus, section 552.130 is not applicable to the deceased individual's driver's license, and the department may not withhold it on that basis.

²Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See Gov't Code* § 552.147(b).

³Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, we note the right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *See Moore*, 589 S.W.2d 489; *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229, H-917; ORD 272 at 1. Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the department has failed to demonstrate how any of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses the doctrine of constitutional privacy, which 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, because “the right of privacy is purely personal,” that right “terminates upon the death of the person whose privacy is invaded.” *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Nevertheless, the United States Supreme Court has determined surviving family members can have a privacy interest in information relating to their deceased relatives. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004) (surviving family members have right to personal privacy with respect to their close relative's death-scene images and such privacy interests outweigh public interest in disclosure).

The submitted information contains photographs of a deceased individual. You state the parents of the decedent have asserted a privacy interest in the information at issue. Upon review, we find the family's privacy interests in the photographs of the deceased outweigh the public's interest in the disclosure of this information. Therefore, the department must withhold the submitted photographs that depict a deceased individual, which we have indicated, under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. None of the remaining information falls within the constitutional zones of privacy or otherwise implicates a living individual's privacy interests

for the purposes of constitutional privacy. As such, none of the remaining information may be withheld under section 552.101 on this basis.

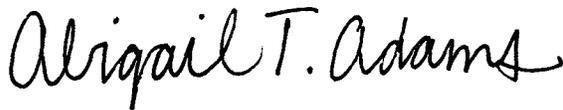
We note some of the remaining information is subject to section 552.136 of the Government Code, which provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”⁴ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the department must withhold the information we have indicated under section 552.136 of the Government Code.

In summary, the department must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The department must withhold the information we have indicated under section 552.136 of the Government Code. The department must release the remaining submitted 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

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⁴The Office of the Attorney General will raise a mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 544959

Enc. Submitted documents

c: Requestor
(w/o enclosures)