



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2009

Ms. Cathy Duhart
Custodian of Records
Sinton Police Department
217 East Market
Sinton, Texas 78387

OR2009-01600

Dear Ms. Duhart:

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# 334346.

The Sinton Police Department (the "department") received a request for information pertaining to a specified case. You claim that 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. We have also received and considered comments submitted by an interested party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. *Id.* § 552.101. We first note that the right of privacy is a personal right that lapses at death. Thus, information may not be withheld on the basis of the privacy interests of a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). *But see* Attorney

General Opinion JM-229 (1984) (if release of information about deceased person reveals highly intimate or embarrassing information about living persons, that information must be withheld under common-law privacy). However, the United States Supreme Court recently recognized 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).

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 and 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. In addition, 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).

In this instance, since the submitted information relates to a deceased individual, it may not be withheld from disclosure based on the privacy interests of the deceased individual. You state, and provide documentation showing, that you have notified the deceased individual's mother of the request and of her right to assert a privacy interest in the submitted information. In this instance, the mother has asserted a privacy interest in the release of the submitted information pertaining to the investigation of her daughter's death. After reviewing the mother's comments and the submitted information, we find that the mother's privacy interest in the photographs of her deceased daughter outweighs the public's interest in the disclosure of this information. We therefore conclude that the department must withhold the photographs that we have marked under section 552.101 in conjunction with common-law privacy. We conclude that none of the remaining information may be withheld from disclosure on privacy grounds. As you do not raise any other exceptions against disclosure, the remaining submitted information must be released.¹

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.

¹We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 334346

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Ms. Wanda Lilley
124 Youpon Court
Cleveland, Texas 77327
(w/o enclosures)