



ATTORNEY GENERAL OF TEXAS
GREG. ABBOTT

September 1, 2009

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2009-12332

Dear Mr. Lestock:

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# 353966.

The City of Paris Police Department (the "department") received a request for information regarding a specified incident. 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.

You raise section 552.101 of the Government Code in conjunction with constitutional and common-law privacy. Constitutional privacy 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 related to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education that 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 disclosure of the information. *See* ORD 455 at 7. Constitutional privacy is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy protects information about an individual if the information (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). The types of information considered intimate or 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.

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.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). In this instance, the submitted information is related to a deceased individual. Therefore, we conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional or common-law privacy.

We note that the submitted information contains information subject to sections 552.130 and 552.136 of the Government Code.¹ Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, 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.” *Id.* § 552.136. The remaining information includes an insurance policy number, which we find to constitute an access device number for purposes of section 552.136. Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code and the marked insurance policy

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

number under section 552.136 of the Government Code. The remaining information must be released to the requestor.²

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.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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 353966

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that because the information being released may be confidential with regard to the general public, if the department receives another request for this information from an individual other than this requestor, the department should again seek our decision.