



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 11, 2009

Ms. Barbara Callistien
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2009-12882

Dear Ms. Callistien:

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# 353634.

The Harris County Medical Examiner (the "medical examiner") received a request for information pertaining to suicide notes, letters, messages, and statements for 210 specified suicides. You state the medical examiner takes no position as to the public availability of the submitted information, but explain that the family members of the deceased individuals at issue in the documents may assert a privacy interest to withhold the submitted information under section 552.101 of the Government Code. We have considered comments submitted by family members of the deceased and by a representative of the requestor, and we have reviewed the submitted information.¹ *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted photographs, which we have marked, are not responsive to the instant request for information because they do not document the requested suicide notes, letters, messages, and statements. The medical examiner need not release non-responsive information in response to this request, and this ruling will not address that information.

¹ To the extent any additional responsive information existed on the date the medical examiner received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 the constitutional right to 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 have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). 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.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. 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.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). However, the United States Supreme Court 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). The submitted suicide notes and letters constitute the most intimate aspects of human affairs, and we find that the privacy interests of the surviving family members in the information at issue outweighs the public’s interest in its disclosure. Accordingly, the medical examiner must withhold the information we have marked under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

We note some of the remaining information is excepted from disclosure under sections 552.136 and 552.137 of the Government Code.² Section 552.136(b) 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.” Gov’t Code § 552.136. The medical examiner must withhold the information we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this

² The Office of the Attorney General will raise 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).

exception. *See id.* § 552.137(c). We have marked e-mail addresses that the medical examiner must withhold under section 552.137 unless the owner of an e-mail address has affirmatively consented to its public disclosure.

In summary, the medical examiner must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The medical examiner must withhold the information we have marked pursuant to section 552.136 of the Government Code. The medical examiner must withhold the e-mail addresses we have marked under section 552.137 unless the owner of an e-mail address has affirmatively consented to its public disclosure. The remaining information must be released to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 353634

Enc. Submitted documents

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