



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2009

Deputy D. Huffman
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2009-13194

Dear Deputy Huffman:

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# 355677.

The Parker County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified case number. You claim that the requested 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 considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

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 Fado 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*, 124 S. Ct. 1570 (2004).

Thus, because the submitted information relates to a deceased individual, it may not be withheld from disclosure based on her privacy interests. However, you state, and provide documentation showing, that you notified the deceased individual's family members of the request for information and of their right to assert a privacy interest in the submitted information. In this instance, you inform us that the deceased individual's spouse has asserted privacy interests in the submitted information. Upon review of your representations and the information at issue, we find that the family member's privacy interests in some of the submitted information outweigh the public's interest in the disclosure of this information. We therefore conclude that the sheriff must withhold the information we have marked under section 552.101 in conjunction with constitutional privacy and the holding in *Favish*. We conclude that none of the remaining information may be withheld from disclosure on the basis of constitutional privacy.

Section 552.101 of the Government Code also encompasses common-law privacy. Common-law privacy 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). 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. As noted above, 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* at 491; ORD 272 at 1. Upon review, we find that the sheriff has failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

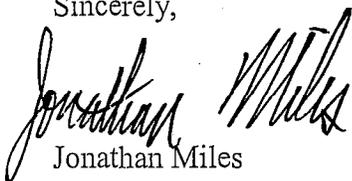
We note the submitted information contains information subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or a Texas motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1), (2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas driver's license information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 489. The sheriff must withhold the Texas driver's license numbers we have marked in the remaining information under section 552.130 of the Government Code.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with constitutional privacy and the ruling in *Favish*. The sheriff must also withhold the driver's license numbers we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 355677

Enc. Submitted documents

c: Requestor
(w/o enclosures)