



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2009

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of Bryan  
P. O. Box 1000  
Bryan, Texas 77805

OR2009-17304

Dear Ms. DeLuca:

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# 363530.

The City of Bryan (the "city") received a request for all information related to a specified incident report. 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.

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 incorporates 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 satisfied. *Id.* at 681-82. The types 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the

requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. We note, however, that the right of privacy 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.); *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). Thus, information that would otherwise be confidential under common-law privacy may not be withheld if it pertains to a deceased individual. In this instance, the requestor knows the identity of the individual at issue and the nature of the incident. However, the individual who is the subject of the report is deceased. Therefore, the city may not withhold any of the submitted information on the basis of the common-law privacy interests of the deceased individual. We also find that none of the submitted information may be withheld based on the common-law privacy interests of any living individual. Accordingly, the city may not withhold any of the submitted information under common-law privacy in conjunction with section 552.101 of the Government Code.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric information except in certain limited circumstances. *See id.* §§ 560.001 ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). In this instance, the information subject to section 560.003 is that of a deceased individual. Sections 560.001, 560.002, and 560.003 are intended to protect an individual's privacy. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). As we previously noted, the right to privacy is personal and lapses at death. *See Moore*, 589 S.W.2d at 491. Therefore, the city may not withhold the fingerprint information, which you have marked Exhibit C, under section 552.101 of the Government Code on the basis of section 560.003 of the Government Code.

We note a portion of the submitted information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides that information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(2). Accordingly, the city must withhold the Texas license plate number we

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

have marked under section 552.130 of the Government Code. As you raise no further exceptions against disclosure, the remaining information must be released to the requestor.<sup>2</sup>

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/eeg

Ref: ID# 363530

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>You inform us that the requestor is a family member of the deceased individual at issue; thus, the city must again seek a decision from this office if it receives a request for this information from a different requestor. See *Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004) (surviving family members can have privacy interest in information relating to their deceased relatives).