



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2011

Ms. Jane Lees  
City Secretary  
City of Copperas Cove  
P.O. Drawer 1449  
Copperas Cove, Texas 76522

OR2011-08151

Dear Ms. Lees:

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# 419996.

The City of Copperas Cove (the "city") received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. You further state some of the submitted information may be subject to the privacy interests of the family of the deceased individual at issue. Thus, pursuant to section 552.304 of the Government Code, you state, and provide documentation showing, you have notified the family of the request and of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have considered the exceptions 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." *Id.* § 552.101. Section 552.101 encompasses information other statutes make confidential. We understand you to raise section 552.101 in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. *See Occ. Code §§ 151.001-165.160.* Section 159.002 of the MPA provides in pertinent part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is

confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). We note the MPA defines a "patient" as "a person who, to receive medical care, consults with or is seen by a physician." *Id.* § 159.001. Based on this definition, a deceased person is not a "patient" under section 159.002 of the MPA. Thus, the MPA is applicable only to records relating to a person who was alive at the time of the diagnosis, evaluation, or treatment to which the records pertain. Upon review, we find you have failed to demonstrate how any portion of the submitted information constitutes a physician-patient communication or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. 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. *See id.* at 683. Additionally, this office has found 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) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining solely to a deceased individual

may not be withheld on common-law privacy grounds. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). In this instance, the submitted information pertains to a deceased individual and does not implicate the privacy interest of any living individual. Therefore, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also 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. 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); 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 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 that 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*, 589 S.W.2d at 491; ORD 272 at 1 (privacy rights lapse upon death).

The United States Supreme Court has determined, however, 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). Because the submitted information relates to a deceased individual, it may not be withheld from disclosure based on his privacy interests. However, as noted above, you have notified the decedent’s family of their right to assert a privacy interest in the information at issue. However, as of the date of this decision, we have received no correspondence from the surviving family members of the decedent. Thus, we have no basis for determining that the family has a privacy interest in any of the submitted information. Therefore, the submitted information may not be withheld under section 552.101 of the Government Code on the basis of constitutional privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). We note that 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 and motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491, *see also* Attorney General Opinions JM-229 (1984), H-917 (1976), ORD 272 at 1. The city must generally withhold the Texas driver’s license and motor vehicle information we have marked under section 552.130 of the Government Code.

However, we note that some of the Texas motor vehicle information at issue relates to a vehicle that was owned by an individual who is now deceased. Accordingly, the information that pertains to the deceased individual may only be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the information we have marked relating to that vehicle is not excepted from disclosure and must be released.

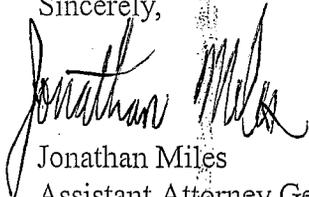
Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>1</sup> The city may withhold the social security number you have marked under section 552.147 of the Government Code.

In summary, the city must generally withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; however, the Texas motor vehicle information that pertains to the vehicle of the deceased individual may be withheld under section 552.130 only if a living person owns an interest in the vehicle at issue. The city may withhold the social security number you have marked under section 552.147 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](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/em

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<sup>1</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)