



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2012

Deputy Danie Huffman
Office of the Sheriff
Parker County
129 Hogle Street
Weatherford, Texas 76086

OR2012-15508

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# 466531.

The Parker County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to a named individual, as well as information pertaining to thirteen specified addresses. You state the sheriff's office has released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 of the Government Code.¹ 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." Gov't Code § 552.101. Section 552.101 encompasses 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. A compilation of an individual's criminal history

¹Although you do not raise section 552.147 of the Government Code in your brief, we understand you to raise this exception based on you markings in the submitted information.

is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request requires the sheriff's office, in part, to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information that does not depict the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal histories, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address the applicability of your remaining arguments to this information.

Section 552.101 of the Government Code also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). However, 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 (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) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Nevertheless, 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).

In this instance, you indicate that you have attempted to notify the deceased individual's family members of the request and of their right to assert a privacy interest in the submitted photographs of the deceased. As of the date of this decision, we have not received correspondence from the family members of the deceased. Thus, we have no basis for determining that those family members have any privacy interest in the submitted photographs of the deceased. Therefore, the photographs at issue may not be withheld under section 552.101 of the Government Code on the basis of constitutional privacy.

You seek to withhold portions of the remaining information under common-law privacy. We note the type 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. 540 S.W.2d at 683. This office has determined that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (prescription drugs, illnesses, operations, and physical handicaps). In addition, this office has determined other types of information are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). However, as noted above, privacy is a personal right that "terminates upon the death of the person whose privacy is invaded." See *Moore*, 589 S.W.2d at 491; see also Attorney General Opinions JM-229, H-917; ORD 272 at 1. Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, we note the dates of birth of members of the public are not excepted from required public disclosure under common-law privacy. See ORD 455 at 7 (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we determine the sheriff's office has failed to demonstrate that the information at issue is intimate or embarrassing and of no legitimate public interest. Accordingly, none of the information at issue may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state you have marked portions of the remaining cases the Parker County District Attorney's office seeks to withhold, as this information relates to pending criminal prosecution cases. You also state portions of the remaining information you have marked relate to criminal investigations in which there has been no arrest or prosecution. Thus, we understand you to assert these investigations are pending. We note, however, that case number 2009-08333 pertains to a misdemeanor theft

that occurred in May of 2009. Furthermore, case number 2009-08524 involves a misdemeanor assault that occurred in December of 2009. The statute of limitations for these types of offenses described in the cases at issue is two years from the date of the offense. See Crim. Proc. Code art. 12.02 (indictment for Class A or Class B misdemeanor may be presented within two years from date of offense, and not afterward); Penal Code §§ 22.01 (assault offense under section 22.01(a) is a Class A misdemeanor), 31.03(e)(2)(a)(i) (theft of property \$50 or more but less than \$500 is a Class B misdemeanor). You state the sheriff's office received this request for information on July 10, 2012. More than two years have elapsed since May of 2009 and December of 2009, in which the events giving rise to the investigations at issue occurred, and you have not informed this office that any criminal charges were filed within the limitations periods. Thus, we find you have failed to demonstrate the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Therefore, the sheriff's office may not withhold the information you have marked in case numbers 2009-08333 and 2009-08524 under section 552.108(a)(1) of the Government Code. However, based on your representations, we conclude section 552.108(a)(1) is applicable to case number 2011-18172. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the sheriff's office may withhold the information you have marked in case number 2011-18172 under section 552.108(a)(1) of the Government Code.

You seek to withhold a marked phone number under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) applies to records a governmental body holds in an employment capacity and excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). Additionally, section 552.117(a)(2) encompasses a peace officer's personal cellular telephone number, provided the cellular telephone service is paid for by the officer with his or her own funds. See Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024); cf. Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). If the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the sheriff's office must withhold the cellular telephone number you have marked under subsection 552.117(a)(2) if the officer paid for his own cellular service. If, however, the

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

officer at issue is not currently licensed peace officer or the cellular service is paid for with governmental funds, the information you have marked may not be withheld under subsection 552.117(a)(2).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note section 552.130 does not protect the state of issuance of a driver's license or license plate, which we have marked for release. We also note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely 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; H-917; ORD 272 at 1. Thus, section 552.130 is not applicable to the deceased individual's driver's license information, which we have marked for release, and the sheriff's office may not withhold it on that basis. Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked under section 552.130 of the Government Code.

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. Gov't Code § 552.147(a). Therefore, the sheriff's office may not withhold the deceased individual's social security number, which we have marked for release, under section 552.147. However, the sheriff's office may withhold the remaining social security numbers you have marked under section 552.147.³

In summary, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office may withhold the information you have marked in case number 2011-18172 under section 552.108(a)(1) of the Government Code. If the individual whose information is at issue is currently a licensed peace officer and pays for the cellular service with his own funds, the sheriff's office must withhold the cellular telephone number you have marked under subsection 552.117(a)(2) of the Government Code. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked under section 552.130 of the Government Code, and may withhold the information you have marked under section 552.147 of the Government Code. The sheriff's office must release the remaining information.

³We 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 466531

Enc. Submitted documents

c: Requestor
(w/o enclosures)