



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2013

Mr. Kent A. Brown
Assistant County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2013-16650

Dear Mr. Brown:

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# 500298.

The Nueces County Medical Examiner's Office (the "medical examiner's office") received a request for any and all files regarding a named individual. We understand the medical examiner's office will release some information to the requestor upon his response to a cost estimate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-09543 (2013). In Open Records Letter No. 2013-09543, we determined the medical examiner's office must withhold the autopsy photographs at issue under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, we conclude the medical examiner's office must rely on Open Records Letter No. 2013-09543 as a previous determination and withhold the submitted autopsy photographs in accordance with

that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note you have marked the driver's license information of a deceased individual. The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, driver's license information that pertains solely to deceased individuals may not be withheld under section 552.130. 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), H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the medical examiner's office must release the deceased individual's driver's license information. However, the medical examiner's office must withhold the driver's license information we have marked, which does not pertain to the deceased individual, under section 552.130 of the Government Code.² We find none of the remaining information consists of motor vehicle record information subject to section 552.130; therefore, none of the remaining information may be withheld on that basis.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], 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(b). We have marked a debit card number in the submitted information. We note section 552.136 also protects the privacy interests of individuals. Therefore, to the extent the debit card number we have marked pertains to an account in which a living individual has an interest, the medical examiner's office must withhold it under section 552.136 of the Government Code.³ However, if the debit card number we have marked pertains

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e).

³Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. See Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See *id.* § 552.136(d), (e).

solely to the deceased individual, the medical examiner's office may not withhold it under section 552.136.

We note you have redacted social security numbers in accordance with section 552.147(b) of the Government Code.⁴ 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. *Id.* § 552.147(a). Therefore, the medical examiner's office may not withhold the deceased individual's social security number under section 552.147. However, the medical examiner's office may withhold the social security numbers of living individuals you have marked under section 552.147(a) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."⁵ *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the marked information pertains to a deceased individual, and as previously noted, privacy is a personal right that lapses at death. *See Moore*, 589 S.W.2d at 491; Attorney General Opinion JM-229. Accordingly, to the extent a living individual has an interest in the financial information we have marked, the medical examiner's office must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. However, if a living individual does not have an interest in the financial information we have marked, the medical

⁴Section 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. Gov't Code § 552.147(b).

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

examiner's office may not withhold it under section 552.101 on the basis of common-law privacy.

In summary, the medical examiner's office must rely on Open Records Letter No. 2013-09543 as a previous determination and withhold the submitted autopsy photographs in accordance with that ruling. The medical examiner's office must withhold the driver's license information we have marked under section 552.130 of the Government Code. To the extent the debit card number we have marked pertains to an account in which a living individual has an interest, the medical examiner's office must withhold it under section 552.136 of the Government Code. The medical examiner's office may withhold the social security numbers of living individuals it marked under section 552.147(a) of the Government Code. To the extent a living individual has an interest in the financial information we have marked, the medical examiner's office must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. The medical examiner's office must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/tch

Ref: ID# 500298

Enc. Submitted documents

c: Requestor
(w/o enclosures)