



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2014

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2014-05773

Dear Ms. Quinn:

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# 522220 (City Reference No. 14-359).

The City of Cedar Park (the "city") received a request for crime scene photographs and "authorization documents" used by a named person pertaining to a specified investigation. The city states it will release some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. The city also informs us it notified the family of the deceased individual at issue of the request, from whom we have received comments objecting to the release of the submitted information. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 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 that 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, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *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 Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); *See 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 (1981) ("the right of privacy is personal and lapses upon death"). Nevertheless, the United States Supreme Court has determined surviving family members can have a privacy interest in information relating to their deceased relatives. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004) (surviving family members have right to personal privacy with respect to their close relative's death-scene images and such privacy interests outweigh public interest in disclosure). The submitted information contains photographs of a deceased individual. Upon review, we find the family's privacy interests in these photographs outweigh the public's interest in the disclosure of this information. Therefore, the city must withhold the photographs labeled 361, 380, 383-385, 388-389, 428-442, 444-451, 467-468, and 474-480 under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.¹ However, we find the remaining information is not confidential under constitutional privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the remaining information does not satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

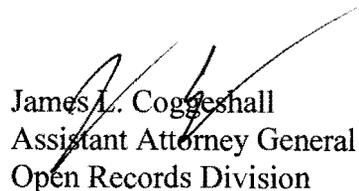
¹As our ruling is dispositive, we do not address your other argument to withhold this information.

In summary, the city must withhold the photographs labeled 361, 380, 383-385, 388-389, 428-442, 444-451, 467-468, and 474-480 under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The city 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 522220

Enc. Submitted documents

c: Requestor
(w/o enclosures)