



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2014

Mr. Michael Bloch  
Deputy District Attorney  
County of Ector  
300 North Grant, Room 305  
Odessa, Texas 79761

OR2014-23225

Dear Mr. Bloch:

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# 547993.

The Ector County District Attorney's Office (the "district attorney's office") received a request for all documents pertaining to the suicide of a named individual, a copy of the suicide note left by the named individual, and any documents from any investigation regarding the named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. 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 information protected by other statutes, such as article 57.02 of the Code of Criminal Procedure. Article 57.02(d) provides a completed pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except by court order. Crim. Proc. Code art. 57.02(d). The information we marked is a pseudonym form. Therefore, the district attorney's office must withhold this form in its entirety under section 552.101 of the Government Code in accordance with article 57.02(d) of the Code of Criminal Procedure.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston* 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

We understand you to contend the basic information is confidential under the doctrine of constitutional privacy. Section 552.101 of the Government Code also encompasses constitutional privacy, which 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 (1987). 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 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, 491 (Tex. Civ. App.—Texarkana 1979, *writ ref'd n.r.e.*); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). However, 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*, 541 U.S. 157 (2004). In this instance, you seek to withhold the basic information to protect the deceased individual's family members' right to privacy. Upon review, we find no portion of the basic information falls within the zones of privacy or implicates a living individual's privacy interests for purposes of constitutional privacy.

Therefore, the district attorney's office may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with constitutional privacy.

In summary, the district attorney's office must withhold the form we have marked under section 552.101 of the Government Code in accordance with article 57.02(d) of the Code of Criminal Procedure. With the exception of basic information, which the district attorney's office must release, the district attorney's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 547993

Enc. Submitted documents

c: Requestor  
(w/o enclosures)