



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2015

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2015-05719

Dear Mr. Kopp:

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# 558457 (COSA No. W054163).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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 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. Additionally, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows

the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the request reveals that the requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. However, the individual to whom the information relates may be deceased. 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"). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. See *Moore*, 589 S.W.2d at 491; see also ORD 272 at 1. Thus, we rule conditionally.

If the individual to whom the information relates is living, the city must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual to whom the information relates is deceased, the city may not withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. In that instance, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*, and the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, motor vehicle title or registration, and personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a). The city must withhold the information we marked under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.136 of the Government Code states “notwithstanding 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The city must withhold the information we marked under section 552.136 of the Government Code.

In summary, if the individual to whom the information relates is living, the city must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual to whom the information relates is deceased, the city may not withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. In that case, the city must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy, (2) section 552.130 of the Government Code, and (3) section 552.136 of the Government Code. 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 558457

Enc. Submitted documents

c: Requestor
(w/o enclosures)