



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2015

Mr. Paul A. Ready
Legal Department
County of Galveston
Galveston County Courthouse
722 Moody Street, Fifth Floor
Galveston, Texas 77550-2317

OR2015-09355

Dear Mr. Ready:

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# 563598.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 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 made confidential by other statutes. You state the submitted information contains a Firearms Trace Summary that was provided to the sheriff's office by the National Trace Center of the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF"). Public Law number 112-55 states, in pertinent part,

[D]uring the current fiscal year and in each fiscal year thereafter, no funds appropriated under [the Consolidated and Further Continuing Appropriations Act, 2012] or any other [a]ct may be used to disclose part or all of the

contents of the Firearms Trace System database maintained by the National Trace Center of the [ATF] or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor . . . unless such disclosure of such data to an[] . . . entit[y] described in (1) . . . of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State[.]

Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011). We understand the Firearms Trace Summary contains content from the Firearms Trace System database maintained by the National Trace Center. Upon review, we find the Firearms Trace Summary we have marked is confidential under Public Law number 112-55. *See Miller v. U.S. Dep't of Justice*, 562 F. Supp. 2d 82, 111 (D.D.C. 2008) (holding Firearms Trace Report properly withheld under Freedom of Information Act exemption 3, which covers records that are exempt from disclosure by statute). Accordingly, the sheriff's office must withhold the Firearms Trace Summary we have marked under section 552.101 of the Government Code in conjunction with Public Law number 112-55.

You also state the firearm serial numbers you have marked constitute information required to be kept by section 923(g) of title 18 of the United States Code and, therefore, are also subject to Public Law number 112-55. Section 923(g) of title 18 of the United States Code requires licensed firearms manufacturers, importers, and dealers to keep records pertaining to the "importation, production, shipment, receipt, sale or other disposition of firearms[.]" 18 U.S.C. § 923(g)(1)(A). We note the information at issue consists of firearm serial numbers in law enforcement records maintained by the sheriff's office. We find you have failed to demonstrate the information at issue was obtained from a licensed firearms manufacturer, importer, or dealer. Therefore, the sheriff's office may not withhold the firearm serial numbers in the submitted information under section 552.101 of the Government Code in conjunction with Public Law number 112-55 and section 923(g) of title 18 of the United States Code.

Section 552.101 of the Government also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides, as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. A portion of the submitted information consists of photographs taken during an autopsy. We note neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the sheriff's office must withhold the photographs you have indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses section 411.153 of the Government Code, which provides, as follows:

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under [the Act].
- (b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.
- (c) An offense under this section is a state jail felony.
- (d) A violation under this section constitutes official misconduct.

Gov't Code § 411.153. A "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. *See id.* § 411.141(6)-(7). "Forensic analysis" is defined as "a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action." *See* Crim. Proc. Code art. 38.35(4); *see also* Gov't Code § 411.141(10) (providing that "forensic analysis" has meaning assigned by article 38.35). A "DNA database" means "one or more databases that contain forensic DNA records maintained by the director of [the Department of Public Safety ("DPS)]." Gov't Code § 411.141(5); *see id.* § 411.001(3).

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.142(h) (requiring director establish standards for DNA analysis), .144(a). Section 411.144 of the Government Code provides that a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b). The director of DPS may release a DNA record in certain instances, including to a criminal justice agency for criminal justice or law enforcement purposes. *See* Gov't Code § 411.147(c).

Upon review, we find the information we have marked consists of records relating to DNA analyses of samples that appear to have been collected under subchapter G of chapter 411 of the Government Code. We note this information is contained in records of a criminal investigation and appears to be the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code. However, we find you have failed to demonstrate how any of the remaining information you have marked consists of records relating to DNA analyses for purposes of chapter 411. Accordingly, the sheriff's office may not withhold the remaining information at issue under section 552.101 of the Government Code on the basis of section 411.153 of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). We note laws making this type of information confidential are intended to protect an individual's privacy. *See id.* § 560.003. Because the right of privacy is purely personal and lapses at death, the fingerprints of a deceased individual may not be withheld on the basis of sections 560.001, 560.002, and 560.003. *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.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); 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"). Upon review, we find the information you have marked consists of the fingerprints of a deceased individual. Therefore, the sheriff's office may not

withhold any of the information at issue under section 552.101 of the Government Code on that basis.

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). We note that because “the right of privacy is purely personal,” that right “terminates upon the death of the person whose privacy is invaded.” See *Moore*, 589 S.W.2d at 491; see also *Belo Broadcasting Corp.*, 472 F. Supp. at 147; see Attorney General Opinions JM-229, H-917; ORD 272. Upon review, we find the information you have marked pertains to a deceased individual. Therefore, the sheriff’s office may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s license or driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130. Upon review, we find some of the information you seek to withhold is not subject to section 552.130 and may not be withheld on that basis; therefore, we have marked this information for release. We note some of the information you have marked, and the additional information we have marked, pertain to a deceased individual’s vehicle. Further, we note the requestor is the surviving spouse of the deceased individual. If the requestor has an interest in the deceased individual’s vehicle, the requestor has a right of access to the motor vehicle record information pertaining to that vehicle, and this information may not be withheld under section 552.130. See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). However, if the requestor does not have an interest in the deceased individual’s vehicle, then the information you have marked, and the additional information we have marked, pertaining to the deceased individual’s vehicle must be withheld under section 552.130 of the Government Code. In either case, except for the information we have marked for release, the sheriff’s office must withhold the remaining information you have marked under section 552.130 of the Government Code.

In summary, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with Public Law number 112-55. The sheriff’s office must withhold the photographs you have indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The sheriff’s office must withhold the information we have marked

under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code; however, information pertaining to the deceased individual's vehicle may only be withheld if the requestor does not have an interest in the deceased individual's vehicle. The remaining information must be released.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 563598

Enc. Submitted documents

c: Requestor
(w/o enclosures)