



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2016

Ms. Elizabeth Dorsey
Assistant District Attorney
County of Waller
645 12th Street
Hempstead, Texas 77445

OR2016-15035

Dear Ms. Dorsey:

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# 617525.

The Waller County District Attorney's Office (the "district attorney's office") received a request for all 9-1-1 call audio recordings made during a specified time period by a named individual at a specified location. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Further, you state release of some of the submitted information may implicate the privacy interests of a third party. Accordingly, the submitted documentation demonstrates you notified a deceased individual's next of kin of the request for information and of her right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from counsel representing the deceased individual's next of kin. We have considered the raised arguments and reviewed the submitted information.

Initially, you indicate a portion of the submitted information is not responsive to the request for information because it does not consist of the 9-1-1 call at issue. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney's office is not required to release this information in response to this request.

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 of the Government Code encompasses the constitutional right to privacy. Constitutional privacy 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. 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 submitted information to protect the deceased's family members' right to privacy. Furthermore, counsel for the next of kin informs us the decedent's next of kin objects to the release of the information at issue. After reviewing the submitted comments and the information at issue, we find the family's privacy interest in the information at issue outweighs the public's interest in the disclosure of this information. Therefore, we find the district attorney's office must withhold the responsive information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

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,

A handwritten signature in black ink, appearing to read 'JTB' with a horizontal line through it and a small flourish to the right.

Joseph Benlike
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 617525

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)