



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 24, 2017

Ms. Monica Solko  
Assistant City Secretary  
City of North Richland Hills  
P.O. Box 820609  
North Richland Hills, Texas 76182-0609

OR2017-04082

Dear Ms. Solko:

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# 645221 (City Reference No. W001222-111416).

The City of North Richland Hills (the "city") received a request for all documents relating to a specified report. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.1085 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from an interested third party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> *Id.* § 552.101. This section encompasses the doctrine of constitutional privacy. Constitutional privacy 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,

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

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 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)). However, because privacy is a personal right that lapses at death, the constitutional right to privacy does not encompass information that relates only to 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.); see also 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). Because the submitted photographs relate to a deceased individual, they may not be withheld from disclosure based on his privacy interests. However, we have received correspondence from a representative of the decedent's family informing us the decedent's family objects to disclosure of the information at issue. Upon review, we find the family's privacy interest in the submitted information outweighs the public's interest in the disclosure of this information. Therefore, we conclude the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.<sup>2</sup> 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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/bw

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<sup>2</sup>As our ruling is dispositive, we need not address the submitted arguments against disclosure of this information.

Ref: ID# 645221

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)