



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 7, 2017

Ms. Sylvia McClellan  
Assistant City Attorney  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2017-04836

Dear Ms. McClellan:

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# 648002 (Ref. No. 2016-24667).

The Dallas Police Department (the "department") received a request for the investigative file and crime scene photos pertaining to a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.1085, 552.130, and 552.137 of the Government Code.<sup>1</sup> Further, you indicate release of some of the submitted information may implicate the privacy interests of a third party. Accordingly, the submitted documentation demonstrates you notified the 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 the deceased individual's next of kin. We have

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<sup>1</sup>We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101, 552.1085, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the department seeks to withhold the telephone number and address of a 9-1-1 caller. In Open Records Letter No. 2011-17075 (2011), this office issued a previous determination to the department authorizing it to withhold the originating telephone number of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Additionally, in Open Records Letter No. 2011-18466 (2011), this office issued a previous determination to the department authorizing it to withhold under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, an originating address of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision. *See Gov't Code* § 552.301(a); ORD 673. Provided the originating telephone number and address of the 9-1-1 caller at issue were furnished by a service supplier established in accordance with chapter 772, the department must withhold the 9-1-1 caller's telephone number and address in accordance with the previous determinations issued in Open Records Letter Nos. 2011-17075 and 2011-18466.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

(a) 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 [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

(1) under a subpoena or authority of other law; or

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<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See Gov't Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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). We note some of the submitted information consists of photographs of the decedent's body taken during an autopsy. You do not indicate either of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the department must withhold the submitted photographs taken during an autopsy of the decedent under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.<sup>3</sup>

Section 552.1085 of the Government Code, provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). You argue the submitted photographs consist of sensitive crime scene images. We understand the information relates to a criminal case that is now closed. Further, you do not indicate any of the exceptions in section 552.1085 apply in this instance. Upon review, we find some of the remaining photographs consist of sensitive crime scene images for the purposes of section 552.1085. Thus, the department must withhold the photographs it marked and the additional photograph we marked under section 552.1085 of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems

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<sup>3</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

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confidential CHRI that DPS maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. See Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Additionally, because the laws governing the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from the DPS or another criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. See Open Records Decision No. 565 at 10-12 (1990). We note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we find some of the remaining information consists of CHRI that is confidential under section 411.083. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also 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, 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). We have received correspondence from a representative of the decedent's family informing us the decedent's family objects to disclosure of some of the remaining information. However, we find the remaining information at issue either does not fall within the zones of privacy or implicate an individual's privacy interests for purposes of constitutional privacy, or the public interest in the information at issue outweighs any

remaining privacy interests. Thus, the department may not withhold the remaining photographs under section 552.101 in conjunction with constitutional privacy and the holding in *Favish*.

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See ORD No. 455. However, 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. 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”). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. Upon review, we find some of the information at issue, which does not pertain to a deceased individual, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we marked to release, the department must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information you marked pertains to a deceased individual. Therefore, the department may not withhold the remaining information 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 license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov’t Code § 552.130. As noted above, the right of privacy lapses at death. See *Moore*, 589 S.W.2d at 491; see also Attorney General Opinions JM-229, H-917; ORD 272. Therefore, motor vehicle record information that pertains solely

to a deceased individual may not be withheld under section 552.130. Accordingly, with the exception of the information we marked to release, the department must withhold the motor vehicle record information you marked, as well as the additional information we marked and indicated, under section 552.130 of the Government Code. However, the remaining information you marked pertains to a deceased individual. Accordingly, the department may not withhold the remaining information you marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). We note because the right to privacy lapses at death, the e-mail address of a deceased individual may not be withheld under section 552.137 of the Government Code. *Moore*, 589 S.W.2d at 491; *see also Belo Broadcasting Corp.*, 472 F. Supp. at 147; Attorney General Opinions JM-229, H-917; ORD 272. One of the e-mail addresses at issue belongs to a living person and is not of a type excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, provided the originating telephone number and address of the 9-1-1 caller at issue were furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code, the department must withhold the 9-1-1 caller’s telephone number and address in accordance with the previous determinations issued in Open Records Letter Nos. 2011-17075 and 2011-18466. The department must withhold the submitted photographs taken during an autopsy of the decedent, under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The department must withhold the photographs it marked and the additional photograph we marked under section 552.1085 of the Government Code. The department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. With the exception of the information we marked to release, the department must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked to release, the department must withhold the motor vehicle record information you marked, as well as the additional information we marked and indicated, under section 552.130 of the Government Code. The department must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department must release the remaining information.<sup>5</sup>

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<sup>5</sup>We note the information being released contains the social security number of a deceased individual, which is not subject to section 552.147 of the Government Code. *See* Gov’t Code § 552.147(a) (excepting from public disclosure social security numbers of living individuals).

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,

A handwritten signature in black ink that reads "Kaelan A. Henze". The signature is written in a cursive style with a large initial "K" and a stylized "A".

Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/eb

Ref: ID# 648002

Enc. Submitted documents

c: Requestor  
(w/o enclosures)