



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 19, 2017

Mr. Michael Shaunessy  
Counsel for the Hutto Police Department  
McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

OR2017-16122

Dear Mr. Shaunessy:

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# 667553.

The Hutto Police Department (the "department"), which you represent, received a request for information regarding a specified incident, including an autopsy report. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions 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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to

section 552.101. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). 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. 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 (SECOND) OF TORTS § 652I (1977))); 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).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the information at issue includes the dates of birth of the requestor and her spouse. Section 552.023(a) of the Government Code states that a person or a person’s authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to her date of birth as well as her spouse’s date of birth if she is acting as her spouse’s authorized representative. Therefore, the department may not withhold the requestor’s own date of birth from her under common-law privacy. Furthermore, if the requestor is acting as her spouse’s authorized representative, then the department may not withhold her spouse’s date of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as her spouse’s authorized representative, then the department must withhold his date of birth under section 552.101 in conjunction with common-law privacy. In any event, the department must withhold the remaining public citizen’s date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information you marked is highly intimate or embarrassing to a living individual and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 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. We note section 552.130 protects privacy interests. As noted above, the requestor may be her spouse’s authorized representative, and may have a right of access to information pertaining solely to him that

would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as her spouse's authorized representative, then the department may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. If the requestor is not acting as her spouse's authorized representative, then the department must withhold the motor vehicle record information pertaining to the requestor's spouse, which 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 the requestor has a right to her own e-mail address under section 552.137(b). *Id.* § 552.137(b). We also note, however, the requestor is the spouse of an individual whose e-mail address is at issue, and may be acting as his authorized representative. *See id.* Accordingly, if the requestor is her spouse's authorized representative, then she has a right of access to his e-mail address, and that information may not be withheld from this requestor under section 552.137 of the Government Code. However, if the requestor is not acting as her spouse's representative, the department must withhold his e-mail address, which we marked, under section 552.137 of the Government Code, unless the requestor's spouse affirmatively consents to its public disclosure.

In summary, if the requestor is not acting as her spouse's authorized representative, then the department must withhold his date of birth under section 552.101 in conjunction with common-law privacy. In any event, the department must withhold the remaining public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the department must withhold (1) the motor vehicle record pertaining to the requestor's spouse, which you marked, under section 552.130 of the Government Code and (2) his e-mail address, which we marked, under section 552.137 of the Government Code, unless the requestor's spouse affirmatively consents to its public disclosure. The department 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](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 "Ian Lancaster", written in a cursive style.

Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/tdw

Ref: ID# 667553

Enc. Submitted documents

c: Requestor  
(w/o enclosures)