



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 16, 2017

Ms. Barbara J. Fox  
Assistant County Attorney  
Chambers County  
P.O. Box 1200  
Anahuac, Texas 77514

OR2017-18672

Dear Ms. Fox:

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# 673009.

Chambers County (the "county") received a request for fourteen categories of information pertaining to a specified case. You state the county does not have information responsive to portions of the request.<sup>1</sup> Additionally, you state the county has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1085, 552.117, 552.1325, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you contend a portion of the submitted information is not responsive to the present request for information. We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find the information at issue is responsive to the

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

present request. Accordingly, we will also consider your arguments against disclosure of this information.

Section 552.1325 of the Government Code provides the following:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

*Id.* § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). The remaining information includes victim impact statements as defined by article 56.03 of the Code of Criminal Procedure. *See id.* § 56.03. The information at issue reflects the victims suffered mental harm as a result of criminally injurious conduct. Thus, we find the individuals who completed the impact statements are victims for purposes of article 56.32, and, thus, are crime victims for purposes of section 552.1325. *See id.* § 56.32(a)(2)(D). We have marked the names of the crime victims and information that otherwise identifies or tends to identify the crime victims. Accordingly, the county must withhold the information we marked under section 552.1325 of the Government Code. However, we note one of the crime victims to whom the information at issue pertains is deceased. Section 552.1325 protects personal privacy interests, and the victim's right to privacy lapsed at his death. *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). Further, we find you have failed to demonstrate the applicability of section 552.1325 to any of the remaining information at issue. Accordingly, the county may not withhold any of the remaining information on the basis of section 552.1325 of the Government Code.

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. 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.).

Upon review, we conclude some of the remaining information, which we marked, meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the information at issue includes the dates of birth of deceased individuals. As previously stated, privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, the dates of birth of the deceased individuals may not be withheld on common-law privacy grounds. See *Moore*, 589 S.W.2d at 491; see also Attorney General Opinions JM-229, H-917; ORD 272. Additionally, we note the information at issue includes the dates of birth of individuals who have been de-identified and whose privacy interests are, thus, protected. Accordingly, the county may not withhold the dates of birth of the de-identified individuals under section 552.101 on the basis of common-law privacy. Thus, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information pertains to a living individual and is highly intimate or embarrassing and of no legitimate public concern, and the county may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. See *id.* § 552.140(a), (b). You do not inform us, and we are unable to determine, when the county first came into possession of the submitted DD-214 form. Therefore, we must rule conditionally. If the county came into possession of the form on or after September 1, 2003, then the county must withhold the form, which we marked, under section 552.140 of the Government Code. If the county received the form before

September 1, 2003, then the county may not withhold the form pursuant to section 552.140 of the Government Code.

Section 552.117(a)(4) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(4). Accordingly, the county must withhold the information we marked under section 552.117(a)(4) of the Government Code.

We note portions of the remaining information may be subject to section 552.1175 of the Government Code.<sup>2</sup> Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining information pertains to a deceased peace officer that is not held by the department in an employment capacity. We note the protection afforded by section 552.1175 generally does not lapse at death, as it is intended to protect the privacy of both the individual and the individual's family members. However, because the protections of dates of birth and social security numbers under section 552.1175 are intended solely to protect the privacy of the individual, those protections lapse at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272 at 1. Accordingly, if the deceased peace officer elected to restrict access to his information in accordance with section 552.1175(b), the county must withhold the information we marked under section 552.1175 of the Government Code. If the deceased peace officer did not elect to restrict access to his information in accordance with section 552.1175(b), then the county may not withhold the marked information under section 552.1175.

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

(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.

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 assert some of the submitted photographs and video recordings consist of sensitive crime scene images. However, upon review, we find you have failed to establish any of the submitted photographs or video recordings consist of sensitive crime scene images excepted from disclosure under section 552.1085. Thus, the county may not withhold any of the information at issue on that basis.

We note some of the remaining information, including the submitted video recordings, is subject to section 552.130 of the Government Code. Section 552.130 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. Accordingly, the county must withhold the visible license plates in the submitted video recordings and the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the county must withhold the information we marked under section 552.1325 of the Government Code. The county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the county came into possession of the marked DD-214 form on or after September 1, 2003, the county must withhold the marked DD-214 form under section 552.140 of the Government Code. The county must withhold the information we marked under section 552.117(a)(4) of the Government Code. To the extent the deceased peace officer elected to restrict access to his information in accordance with section 552.1175(b), the county must withhold the information we marked under section 552.1175 of the Government Code. The county must withhold the visible license plates in the submitted video recordings and the motor vehicle record information we marked under section 552.130 of the Government Code. The county must release the remaining information.<sup>3</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/>

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<sup>3</sup>We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

[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 'KH', with a horizontal line extending to the right.

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 673009

Enc. Submitted documents

c: Requestor  
(w/o enclosures)