



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 15, 2017

Mr. Renaldo Stowers  
Senior Associate General Counsel  
University of North Texas System  
1155 Union Circle #310907  
Denton, Texas 76203

OR2017-26064

Dear Mr. Stowers:

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# 689135 (ORR# 005357, 005367).

The University of North Texas (the "university") received two requests from different requestors for a specified incident report. The university claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third 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.). Nevertheless, 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 Broad. 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”). We note the submitted information does not contain the date of birth of a living person. Upon review, we find none of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the submitted information is not confidential under common-law privacy, and the university may not withhold any of it under section 552.101 on that ground.

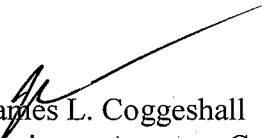
Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records 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 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). However, as noted above, 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*, 589 S.W.2d at 491; ORD 272. However, the United States Supreme Court has determined 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). Upon review, we find none of the submitted information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the submitted information is not confidential under constitutional privacy, and the university may not withhold any of it under section 552.101 on that ground. Consequently, the university must release the submitted 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sb

Ref: ID# 689135

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)