



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2017

Ms. Donna Longino
Records Clerk
Polk County Sheriff's Office
1733 North Washington
Livingston, Texas 77351

OR2017-26681

Dear Ms. Longino:

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# 691570.

The Polk County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim 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, 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. The 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 privacy

¹Although you do not raise section 552.130 in your brief, we understand you to raise this section based on your markings in the submitted information.

is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates to only a deceased individual. Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *See 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* 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 at 1 (1981) (privacy rights lapse upon death). Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff’s office may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy. Further, the dates of birth of the victims at issue pertain to a deceased individuals and may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. *See Gov’t Code. § 552.130(a)(1)*. However, section 552.130 protects privacy, which is also a personal right that lapses at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Thus, section 552.130 is not applicable to the deceased individuals’ driver’s license numbers, and the sheriff’s office may not withhold that information on that basis. As no further exceptions to disclosure have been raised, the submitted information must be released.

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, 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 691570

Enc. Submitted documents

c: Requestor
(w/o enclosures)