



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2017

Ms. Lynn M. Winter
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2017-27336

Dear Ms. Winter:

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# 686194 (COFW PIR No. W065129).

The City of Fort Worth (the "city") received a request for a specified police report. The city received a second request from the same requestor for the photographs related to the report. The city states it has released some information to the requestor. The city claims the submitted 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 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 (citing

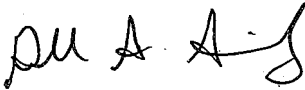
Ramie v. City of Hedwig Village, Texas, 765 F.2d 490 (5th Cir. 1985)). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); 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).

The city informs us the requestor “is believed to be a family member,” and we note the requestor states, in his information request, that he is the son of the deceased individual. Although the city states the surviving family members of the deceased individual may assert a privacy interest in the submitted information, it also informs us it has been unable to identify other surviving family members. As of the date of this letter, we have not received any correspondence from a family member of the deceased individual objecting to disclosure of the information at issue. Thus, we find the city has not demonstrated any of the submitted information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy, and the city must release it.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 686194

Enc. Submitted documents

c: Requestor
(w/o enclosures)