



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2018

Ms. Susan DeMeo
Legal Assistant
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2018-01580

Dear Ms. DeMeo:

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# 692561 (PIR# G004710-102617).

The Georgetown Police Department (the "department") received a request for information pertaining to a specified accident. You state some information has been released to the requestor. The department has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Upon review, we find the submitted video recordings contain information subject to section 552.130. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Accordingly, the department must withhold the submitted recordings in their entireties under section 552.130 of the Government Code.² See Open Records Decision No. 364 (1983).

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. See 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, because privacy is a personal right that lapses at death, the constitutional right to privacy does not encompass information that relates only to 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.); see also Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Nevertheless, 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 department states, and provides documentation showing, it notified the deceased individual’s next of kin of the request for information and of their right to submit arguments to this office explaining why the information should not be released. See Gov’t Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). As of the date of this letter, we have not received correspondence from any members of the deceased’s family objecting to disclosure of the information at issue. Therefore, we find the department failed to demonstrate any of the remaining information falls within the zone’s of privacy or implicates an individual’s privacy interests for the purposes of constitutional privacy. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on the basis of constitutional privacy.

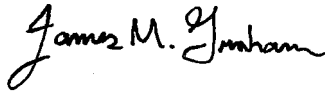
In summary, the department must withhold the submitted recordings in their entireties under section 552.130 of the Government Code. The department must release the remaining information.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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, 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 cursive script that reads "James M. Graham".

James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 692561

Enc. Submitted documents

c: Requestor
(w/o enclosures)