



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Mr. John K. McKinney, Jr.
Assistant County Attorney
Montgomery County Attorney's Office
501 North Thompson Street, Suite 300
Conroe, Texas 77301

OR2019-00496

Dear Mr. McKinney:

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# 745434 (Reference No. 18PIA522).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information concerning a specified homicide. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. 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. This section 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 (quoting

Ramie v. City of Hedwig Village, Texas, 765 F.2d 490, 492 (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). 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). You state, and provide documentation demonstrating, the decedent's family objects to disclosure of the information at issue. Upon review, we find the family's privacy interest in the information we have indicated outweighs the public's interest in the disclosure of this information. Therefore, we conclude the sheriff's office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.¹ However, we find the remaining information at issue either does not fall within the zones of privacy or implicate an individual's privacy interests for purposes of constitutional privacy, or the public interest in the information at issue outweighs any remaining privacy interests. Thus, the sheriff's office may not withhold the remaining information under section 552.101 in conjunction with constitutional privacy and the holding in *Favish*.

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

(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.

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). Upon review, we find the remaining information does not consist of sensitive crime scene images for purposes of section 552.1085. Thus, the sheriff's office may not withhold any of the remaining information under section 552.1085 of the Government Code.

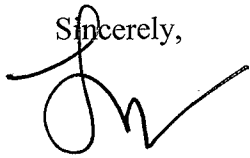
In summary, the sheriff's office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The sheriff's office must release the remaining information.

¹As our ruling is dispositive, we need not address the 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 black ink, appearing to read 'Jahna Ward', with a long horizontal stroke extending to the right.

Jahna Ward
Assistant Attorney General
Open Records Division

JW/gw

Ref: ID# 745434

Enc. Submitted documents

c: Requestor
(w/o enclosures)