



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2019

Mr. Trey Qualls
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2019-08299

Dear Mr. Qualls:

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# 756889 (PIR# W080105).

The City of Fort Worth (the "city") received a request for the investigation file pertaining to a specified incident. You state the city will release a portion of the information requested. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, the city notified the next of kin of the deceased individual of the right to submit comments to this office why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 (quoting *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). As noted above, you state the city notified the deceased individual's next of kin of the request for information and of the right to submit comments to this office. As of the date of this letter, we have not received any correspondence from any members of the deceased's family objecting to disclosure of the information at issue. Thus, we have no basis for determining the family's privacy interests in the information at issue. Therefore, we conclude the city may not withhold the submitted information under section 552.101 of the Government Code on the basis of constitutional privacy. The city 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, 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 M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 756889

Enc. Submitted documents

c: Requestor
(w/o enclosures)