



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 9, 2019

Mr. Thomas McMillian  
Assistant City Attorney  
City of Amarillo  
200 Southeast Third Avenue, Fourth Floor  
Amarillo, Texas 79101

OR2019-09526

Dear Mr. McMillian:

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# 758637 (Request 18-2761).

The City of Amarillo (the "city") received a request for information pertaining to a specified report.<sup>1</sup> You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.1085, 552.119, and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.1085 of the Government Code provides, in relevant part, the following:

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<sup>1</sup>As you have not submitted a copy of the request for information, we take our description from your brief.

<sup>2</sup>We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.1085, 552.119, and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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). The city argues some of the submitted photographs consist of sensitive crime scene images. We understand the information at issue relates to a criminal case that is now closed. Further, you state none of the exceptions in section 552.1085 apply in this instance. Upon review, we agree some of the submitted photographs, which we indicated, consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the city must withhold the photographs we indicated under section 552.1085(c) of the Government Code. However, we find none of the remaining photographs consist of sensitive crime scene images for the purposes of section 552.1085. Therefore, the city may not withhold the remaining photographs under section 552.1085(c) of the Government Code.

You assert some of the remaining information may be withheld from disclosure under section 552.119 of the Government Code. Section 552.119 provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

*Id.* § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find you have failed to demonstrate release of the photographs at issue would endanger an officer's life or physical safety. Accordingly, the city may not withhold the photographs at issue under section 552.119 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> *Id.* § 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). We note, however, because “the right of privacy is purely personal[,]” that right “terminates upon the death of the person whose privacy is invaded[.]” *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 *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d); see 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 (1981) (the right of privacy is personal and lapses upon death). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked and, with the exception of the dates of birth of the deceased individuals, all public

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information we marked and indicated under section 552.130 of the Government Code.

Section 552.136 states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We note the purpose of section 552.136 is to protect the privacy interests of individuals, and, as noted above, the right to privacy lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Accordingly, if the information we marked and indicated pertains solely to the accounts of a deceased individual, it is not excepted from disclosure under section 552.136. However, if the information we marked and indicated pertains to accounts in which a living person has an interest, the city must withhold the information we marked and indicated under section 552.136 of the Government Code.

In summary, the city must withhold the photographs we indicated under section 552.1085(c) of the Government Code. The city must withhold the information we marked and, with the exception of the dates of birth of the deceased individuals, all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked and indicated under section 552.130 of the Government Code. To the extent the information we marked and indicated pertains to accounts in which a living person has an interest, the city must withhold the information we marked and indicated under section 552.136 of the Government Code. The city must release the remaining information.<sup>4</sup>

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.

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<sup>4</sup>We note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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](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 "D. Michelle Case". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/mo

Ref: ID# 758637

Enc. Submitted documents

c: Requestor  
(w/o enclosures)