



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2019

Mr. Carlos G. Madrid
Assistant County Attorney
County of El Paso
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2019-13363

Dear Mr. Madrid:

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# 766513 (ORR# 0196-19-PI, OP-19-232,).

The El Paso County Sheriff's Office and the El Paso County Medical Examiner's Office (collectively, the "county") each received requests from the same requestor for information pertaining to a specified incident, including autopsy reports.¹ The county states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.² 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. This section encompasses section 11(a) of article 49.25 of the Code of Criminal Procedure, which reads as follows:

¹The county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²Although the county also raises section 552.1085 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the county no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11(a). The county asserts some of the submitted information is confidential under section 11(a) of article 49.25 of the Code of Criminal Procedure. Upon review, we find some of the submitted information, which we have marked for release, does not consist of a photograph or x-ray of a body taken during an autopsy. Therefore, this information is not confidential under section 11(a) and the county may not withhold it under section 552.101 on that ground. However, we agree the remaining information it has marked pursuant to section 11(a) is confidential under that section. Accordingly, with the exception of the photographs we have marked for release, the county must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 11(a) of article 49.25 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. This section encompasses the doctrine of constitutional privacy, which 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 (1981) (privacy rights lapse upon death). However, the United States Supreme Court has determined 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). Because the information at issue relates to deceased individuals, the county may not withhold it to protect either individual's privacy interest. The requestor represents one of the

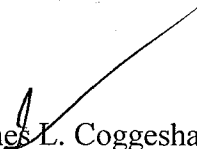
deceased individuals. However, the county states it has notified the family members of the other deceased individual of the request for information and of their right to assert a privacy interest in the information at issue. As of the date of this decision, we have not received correspondence from the deceased individual's family requesting the information at issue be withheld. Thus, we have no basis for determining the family has a privacy interest in the information at issue. Therefore, the county may not withhold the submitted information under section 552.101 in conjunction with constitutional privacy.

In summary, with the exception of the photographs we have marked for release, the county must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 11(a) of article 49.25 of the Code of Criminal Procedure. The county must release the remaining 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 766513

Enc. Submitted documents

c: Requestor
(w/o enclosures)