



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 28, 2019

Mr. Christopher K. Austria  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2019-30265

Dear Mr. Austria:

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# 794288 (PIR No. W089293).

The Fort Worth Police Department (the "department") received a request for all information pertaining to a specified case number. You inform us the department will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also inform us you have notified the surviving family members of a deceased individual depicted in the submitted information of the right to submit comments to this office explaining 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 exception you claim 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." 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 (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 department notified the deceased individual’s surviving family members 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. Accordingly, we conclude the department may not withhold the submitted information under section 552.101 of the Government Code on the basis of constitutional privacy. The department 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/jxd

Ref: ID# 794288

Enc. Submitted documents

c: Requestor  
(w/o enclosures)