



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 12, 2019

Mr. Matthew Murray  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102

OR2019-31792

Dear Mr. Murray:

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#796088 (PIR No. W089895).

The City of Fort Worth (the "city") received a request for specified photographs involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the privacy interests of the named individual's family. Accordingly, you state, and provide documentation showing, the city notified the named individual's next of kin of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (providing that 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 representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. 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,

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<sup>1</sup> We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 at 1 (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).

The submitted information relates to a deceased individual. Therefore, it may not be withheld from disclosure based on the deceased individual's privacy interest. However, as noted above, you inform us the city notified the deceased individual's family of the request for information and of their right to assert a privacy interest in the information at issue. As of this date, we have not received correspondence from any member of the deceased individual's family asserting a privacy interest in the information. Thus, we have no basis for determining a family member has a privacy interest in the information at issue. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. As you raise no other exceptions to disclosure, the submitted information must be released.

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 McCormick  
Attorney  
Open Records Division

SMC/eb

Ref: ID# 796088.

Enc. Submitted documents

c: Requestor  
(w/o enclosures)