



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 7, 2020

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OR2020-00585

Dear Mr. Davis:

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# 803942 (Request ID: 66085562).

The Upshur County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information related to a named individual. You state the sheriff's office does not possess information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.119, 552.130, and 552.147 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the representative sample of information.<sup>3</sup>

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> Although the sheriff's office raises section 552.1425 of the Government Code, we note this section is not an exception to disclosure. Rather, this section provides for civil penalties when a private entity disseminates certain criminal history record information. *See Gov't Code* § 552.1425. Further, although you raise sections 552.108(b)(1) and 552.108(b)(2) of the Government Code, you make no arguments to support these assertions. Therefore, we assume you have withdrawn your claim that these exceptions apply to the submitted information. *See id.* §§ 552.301, .302. Also, although you raise rule 503 of the Texas Rules of Evidence, we note the proper exception to raise when asserting attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See Open Records Decision No. 676 at 1-2 (2002).*

<sup>3</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  
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Initially, we note some of the submitted information is not responsive to the present request because it was created after the date of the present request. This ruling does not address the public availability of the non-responsive information, which we marked, and the sheriff's office need not release it in response to this request.<sup>4</sup>

Next, we note the responsive information includes grand jury subpoenas and information obtained through grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the sheriff's office holds the subpoenas and information obtained through grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the sheriff's office is not required to release that information. To the extent the sheriff's office holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your argument against its disclosure.

Next, we note the remaining responsive information includes autopsy photographs subject to section 11 of article 49.25 of the Code of Criminal Procedure, which provides:

(a) 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 Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, 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.

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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.

<sup>4</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

(b) Under the exception to public disclosure provided by [s]ubsection (a), a governmental body . . . may withhold a photograph or x-ray described by [s]ubsection (a) without requesting a decision from the attorney general under [s]ubchapter G, Chapter 552, Government Code. This subsection does not affect the required disclosure of a photograph or x-ray under [s]ubsection (a)(1) or (2).

Crim. Proc. Code art. 49.25, § 11. We note the submitted autopsy photographs pertain to an individual who died while in the custody of law enforcement. Photographs taken of the body of a person who died while in the custody of law enforcement are public and not confidential. *Id.* § 11(a)(2). Although you seek to withhold these photographs under section 552.108 of the Government Code, this exception to disclosure found in the Act does not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the sheriff's office must release the submitted autopsy photographs pursuant to section 11(a)(2) of article 49.25 of the Code of Criminal Procedure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The sheriff's office states the remaining responsive information pertains to an investigation with the Texas Rangers that has concluded and did not result in a conviction or deferred adjudication. In this instance, the sheriff's office has not provided our office with any representation to indicate the Texas Rangers wish to have the information at issue withheld. Accordingly, the sheriff's office has failed to demonstrate section 552.108(a)(2) of the Government Code is applicable to the information at issue, and the sheriff's office may not withhold any portion of the remaining responsive information under section 552.108(a)(2) of the Government Code.

Section 552.107(1) of the Government Code protects information subject to the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD 676 at 6-7. First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney

for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the remaining responsive information in Exhibit D constitutes communications between attorneys for the sheriff’s office and sheriff’s office employees that were made for the purpose of facilitating the rendition of professional legal services to the sheriff’s office. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the sheriff’s office may withhold the remaining responsive information in Exhibit D under section 552.107(1) 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.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the information we have marked was used or developed in an investigation conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes

of section 261.201 of Family Code). You have not indicated the sheriff's office has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information we have marked is confidential under section 261.201 of the Family Code, and the sheriff's office must withhold it under section 552.101 of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. This provision makes confidential certain information related to terrorism. Section 418.182 provides, in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov't Code § 418.182(a). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state Exhibit C consists of surveillance camera recordings. You indicate the surveillance cameras at issue are part of the security system used in the Upshur County Jail (the "jail"). You state the submitted surveillance camera recordings reveal the location and capabilities of jail security and surveillance points. You further state release of the information at issue "is part of a security system used to protect the jail from acts of terrorism or related criminal activities." Based on your representations and our review, we conclude the submitted surveillance camera recordings are related to the specifications, operating procedures, or location of a security system used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images necessarily relate to specifications of security system that recorded them, and thus, are confidential under section 418.182). Accordingly, the sheriff's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.<sup>6</sup>

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which applies to L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms. L-2 and L-3 forms are required

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<sup>5</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

by the Texas Commission on Law Enforcement (TCOLE). Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon review, we find you have failed to demonstrate any portion of the remaining responsive information consists of L-2 or L-3 declaration forms. Accordingly, the sheriff's office may not withhold any portion of the remaining responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing [EMS] to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Exhibit E contains records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to portions of Exhibit E. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Upon review, we find Exhibit E contains information which constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA.<sup>7</sup> However, we find the sheriff's office has not demonstrated any portion of the remaining information at issue consists of medical records for purposes of the MPA, and the sheriff's office may not withhold any of the remaining information at issue under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by section 181.006 of the Health and Safety Code. Section 181.006 states that "[f]or a

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<sup>7</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

covered entity that is a governmental unit, an individual's protected health information . . . is not public information and is not subject to disclosure under [the Act]." Health & Safety Code § 181.006(2). Section 181.001(b)(2)(A) defines "covered entity," in part, as any person who:

for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

*Id.* § 181.001(b)(2)(A). You do not assert the sheriff's office is a covered entity for purposes of section 181.006 of the Health and Safety Code. In order to determine whether the sheriff's office is a covered entity, we must address whether the sheriff's office engages in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. Section 181.001 states that "[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards ["HIPAA"]." *Id.* § 181.001(a). Accordingly, as chapter 181 does not define "protected health information," we turn to HIPAA's definition of the term. HIPAA defines "protected health information" as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines "individually identifiable health information" as information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - (i) That identifies the individual; or
  - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

*Id.* You do not assert the sheriff's office is a covered entity and you have not explained how the remaining information consists of protected health information. Thus, we find you have failed to demonstrate the applicability of section 181.006 of the Health and Safety Code. Accordingly, the sheriff's office may not withhold any of the remaining responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. We further note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Lastly, we note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find some of the remaining responsive information, which we have marked, consists of CHRI that is confidential under section 411.083. Accordingly, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>8</sup> However, no portion of the remaining responsive information constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the sheriff’s office may not withhold any of the remaining responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records and provides:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find you have failed to demonstrate any of the remaining

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<sup>8</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

responsive information consists of mental health records for purposes of section 611.002. Consequently, the sheriff's office may not withhold any of the remaining responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *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.). However, the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *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, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting Restatement (Second) of Torts § 652I (1977))); 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, the sheriff's office must withhold all visible and audible dates of birth of living public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has failed to demonstrate the remaining information at issue is highly intimate or embarrassing to a living individual and of no legitimate public concern. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455

at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied privacy to protect certain information about incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976) as authority, this office held that those individuals who correspond with inmates possess a “first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure;” and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who has corresponded with inmates, and our office found that “the public’s right to obtain an inmate’s correspondence list is not sufficient to overcome the first amendment right of the inmate’s correspondents to maintain communication with him free of the threat of public exposure.” ORD 185. Implicit in this holding is the fact that an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates has a First Amendment right to do so that would be threatened if their names were released. ORDs 428 and 430. Further, we recognized that inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See also* ORD 185. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. *Id.*; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Nevertheless, because “the right of privacy is purely personal[,]” that right “terminates upon the death of the person whose privacy is invaded[.]” *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272. In this instance, portions of the remaining information consist of a deceased inmate’s correspondence and of a deceased inmate’s telephone conversations. Although one of the inmates at issue is deceased and his privacy rights lapsed at death, the identities of the individuals who received the correspondence and the individuals who received the telephone calls at issue in their association with the inmates are confidential under constitutional privacy. Accordingly, the sheriff’s office must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with the constitutional right to privacy.<sup>9</sup>

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). You assert the remaining responsive information is excepted from disclosure under section 552.102(a). Upon review, we find you have failed to demonstrate any portion of the remaining responsive information is

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<sup>9</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

subject to section 552.102(a) of the Government Code, and the sheriff's office may not withhold any of the remaining responsive information on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note the purpose of section 552.130 is to protect privacy. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272. The remaining motor vehicle record information relates to an individual who is deceased. Accordingly, the sheriff's office may not withhold the remaining motor vehicle record information under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147(a). We note the purpose of section 552.147 is to protect the privacy interests of individuals. As noted above, the right of privacy lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272. Therefore, a social security number that pertains solely to a deceased individual may not be withheld under section 552.147. Upon review, we find the social security number at issue pertains to a deceased individual. Accordingly, the sheriff's office may not withhold any portion of the remaining responsive information under section 552.147 of the Government Code.

In summary, to the extent the sheriff's office holds the subpoenas and information obtained through grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the sheriff's office is not required to release that information. The sheriff's office must release the submitted autopsy photographs pursuant to section 11(a)(2) of article 49.25 of the Code of Criminal Procedure. The sheriff's office may withhold the remaining responsive information in Exhibit D under section 552.107(1) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. With the exception of the information subject to section 773.091(g), the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office must withhold all visible and audible dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with the constitutional right to privacy. The sheriff's office must release the remaining responsive 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 McCormick  
Attorney  
Open Records Division

SMC/eb

Ref: ID# 803942

Enc. Submitted documents

c: Requestor  
(w/o enclosures)