



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2020

Mr. Jeffrey L. Moore
Counsel for the City of Roanoke
Brown & Hofmeister, L. L. P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-00588

Dear Mr. Moore:

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# 804788.

The Roanoke Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a fatality traffic accident. You state you have released some information to the requestors. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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. This section 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 (1987). 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).

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 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 you acknowledge, the submitted photographs depict a deceased individual. Because these photographs relate to a deceased individual, they may not be withheld from disclosure based on the deceased individual's privacy interests. However, you state the department notified the deceased individual's family of the request for information and of the family's right to assert a privacy interest in the information at issue. As of the date of this letter, we have not received any correspondence from the deceased individual's family. Thus, we have no basis for determining the family's privacy interests in the information at issue. Therefore, we conclude the department may not withhold the information at issue under section 552.101 in conjunction with constitutional privacy.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). However, as noted above, the right to privacy is a personal right that lapses at death and information pertaining to a deceased individual may not be withheld on common-law privacy grounds. *Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); ORD 272. Accordingly, the department must withhold all living public citizens' dates of birth in the under section 552.101 of the Government Code in conjunction with common-law privacy.

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.¹ *See* Gov't Code § 552.130. We note the purpose of this exception is to protect privacy. Because the right of privacy lapses at death, information that pertains solely to a deceased individual may not be withheld under section 552.130. *Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272. Therefore, the department may not withhold motor vehicle record information pertaining solely to a deceased individual under section 552.130. Accordingly, with the exception of the motor vehicle record information pertaining solely to the deceased individual, the

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

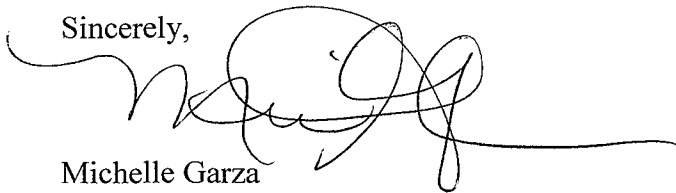
department must withhold driver's license numbers, license plate numbers and states of issuance, and any discernible license plates in the photographs under section 552.130 of the Government Code.

In summary, the department must withhold all living public citizens' dates of birth in the under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information pertaining solely to the deceased individual, the department must withhold driver's license numbers, license plate numbers and states of issuance, and any discernible license plates in the photographs under section 552.130 of the Government Code. The remaining 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,



Michelle Garza
Assistant Attorney General
Open Records Division

MG/jxd

Ref: ID# 804788

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)