



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2020

Ms. Brittaney N. Davis
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2020-06086

Dear Ms. 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# 810807 (PIR No. W093514).

The City of Fort Worth (the "city") received two requests from different requestors for information pertaining to a specified motor vehicle accident. You state the city released some information to the requestors. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city provides documentation showing it notified an individual of the right to submit comments stating why information should or 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 received comments from the deceased individual's family. We have considered the submitted arguments 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." *Id.* § 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).

Because the photographs at issue relate to a deceased individual, they may not be withheld from disclosure based on the deceased individual's privacy interests. However, the city states it notified the deceased individual's family of the requests for information and of the family's right to assert a privacy interest in the submitted information. In correspondence with this office, a member of the deceased individual's family asserts a privacy interest in the submitted information and objects to its release to the public. After reviewing the submitted comments and the information at issue, we find the family's privacy interest in the photographs at issue outweighs the public's interest in the disclosure of this information. Therefore, the city must withhold the submitted photographs from the second requestor under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

However, the first requestor represents the decedent's family. Under section 552.023 of the Government Code, "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, the city may not withhold any of the information at issue from this requestor under section 552.101 of the Government Code on the basis of constitutional 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. Accordingly, the city must

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).

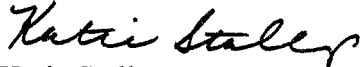
withhold all visible license plates in the submitted information under section 552.130 of the Government Code.

In summary, the city must withhold the submitted photographs from the second requestor under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The city must withhold all visible license plates in the submitted information under section 552.130 of the Government Code. The city must release the remaining information to the first requestor.

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,



Katie Stallcup
Attorney
Open Records Division

AKS/gw

Ref: ID# 810807

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)