



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Ms. Jodi Sharp
Office Manager
Erath County Sheriff's Office
1043 Glen Rose Highway
Stephenville, Texas 76401

OR2020-18981

Dear Ms. Sharp:

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# 837401.

The Erath County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff's office has redacted information from the submitted documents. We understand you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.² However, we note you have also redacted additional information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). The sheriff's office does not assert, nor does our review of our records indicate, it has been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to

¹ Although the sheriff's office does not raise section 552.101 of the Government Code in its brief, we understand the sheriff's office to raise this exception based on its markings.

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"). Thus, in the future, the sheriff's office should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Section 552.1085 of the Government Code provides, in pertinent part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

(1) the deceased person's next of kin[.]

Id. § 552.1085(c), (d)(1). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). We understand the information at issue relates to a criminal case that is now closed. Upon review, we find the photographs we indicated consist of sensitive crime scene images for purposes of section 552.1085. However, we note the requestor may represent the next of kin of the deceased person depicted in the photographs at issue under section 552.1085. *See id.* § 552.1085(a)(1) (defining "deceased person's next of kin"). In that event, the requestor would have a right to view or copy the photographs at issue pursuant to section 552.1085(d)(1). *See id.* § 552.1085(d)(1). As we are unable to determine whether the requestor represents the deceased person's next of kin, we must rule conditionally. If the requestor does not represent the deceased person's next of kin, then the sheriff's office must withhold the photographs we indicated under section 552.1085(c) of the Government Code. If the requestor does represent the deceased person's next of kin, then the sheriff's office may not withhold the photographs at issue pursuant to section 552.1085 but, instead, must release them to her. In either instance, we find the remaining information at issue does not consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the sheriff's office may not withhold the remaining information at issue under section 552.1085(c) of the Government Code.

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.

Section 552.101 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 *Industrial Foundation*. *Id.* at 683. 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. We note the requestor has a right of access to his living clients' dates of birth. *See Gov't Code* § 552.023(a) (“person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the requestor's living clients' dates of birth, the sheriff's office must withhold all living public citizens' dates of birth 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 and of no legitimate public interest. Thus, the sheriff's office may not withhold the remaining information at issue under section 552.101 in conjunction with common-law privacy.

We understand the sheriff's office is redacting motor vehicle record information pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional motor vehicle information. 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 section 552.130 protects privacy interests. As previously discussed, the right of privacy is a personal right that lapses at death. *See Moore*, 589 S.W.2d at 491; Attorney General Opinions JM-229, H-917; ORD 272. Thus, section 552.130 is not applicable to the deceased individual's driver's license information. We note, because section 552.130 protects privacy interests, the requestor has a right of access to her living client's motor

vehicle record information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. In this instance, the requestor may have a right of access to the motor vehicle record information at issue pursuant to section 552.023 of the Government Code. Accordingly, with the exception of the motor vehicle record information belonging to the requestor's living clients and the information we marked for release, the sheriff's office must withhold information you marked and the additional information we marked under section 552.130 of the Government Code. However, we find the information we marked for release does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the sheriff's office may not withhold the information we marked for release under section 552.130.

In summary, if the requestor does not represent the deceased person's next of kin, then the sheriff's office must withhold the photographs we indicated under section 552.1085(c) of the Government Code. With the exception of the requestor's living clients' dates of birth, the sheriff's office must withhold all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information belonging to the requestor's living clients and the information we marked for release, the sheriff's office must withhold information you marked and the additional information we marked under section 552.130 of the Government Code. The sheriff's office must release the remaining 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
Assistant Attorney General
Open Records Division

SMC/jm

Ref: ID# 837401

Enc. Submitted documents

c: Requestor
(w/o enclosures)