



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2020

Ms. Katlyn Betterton  
Records Clerk  
Anderson County Sheriff's Office  
1200 East Lacy  
Palestine, Texas 75801

OR2020-21221

Dear Ms. Betterton:

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# 841507.

The Anderson County Sheriff's Office (the "sheriff's office") received a request for all reports, investigative notes, digital media, and photographs regarding a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.1085 of the Government Code provides, in 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.

Gov't Code § 552.1085(c). 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). You state the submitted photographs consist of sensitive crime scene

images. We understand the information at issue relates to a closed criminal case. Further, it appears none of the exceptions in section 552.1085 apply in this instance. Based upon your representations and our review, we find some the submitted photographs consist of sensitive crime scene images for purposes of section 552.1085. Accordingly, the sheriff's office must withhold the photographs we indicated under section 552.1085(c) of the Government Code.<sup>1</sup> However, we find none of the remaining information at issue consists of sensitive crime scene images for the purposes of section 552.1085, and the sheriff's office may not withhold it under section 552.1085(c).

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. 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note 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"). Thus, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. Upon review, we find some of the information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked and indicated and all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

the remaining information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>2</sup> Gov't Code § 552.1175. Section 552.1175 applies, in part, to "a firefighter or volunteer firefighter or emergency medical services personnel as defined by section 773.003, Health and Safety Code." *Id.* § 552.1175(a)(15). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 a 5-6 (1988). Accordingly, to the extent the information we marked pertains to an individual who is subject to section 552.1175(a)(15), the individual elects to restrict access to the information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code. However, if the individual does not elect to restrict access to his information in accordance with section 552.1175(b) or the cellular telephone service is paid for by a governmental body, then the information at issue may not be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Accordingly, we find the sheriff's office must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the photographs we indicated under section 552.1085(c) of the Government Code. The sheriff's office must withhold the information we marked and indicated and all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked pertains to an individual who is subject to section 552.1175(a)(15) of the Government Code, the individual elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service is not paid for by a governmental body, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code. The sheriff's office must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code. The sheriff's office must release the remaining information.

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/gw

Ref: ID# 841507

Enc. Submitted documents

c: Requestor  
(w/o enclosures)