



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 2, 2020

Ms. Victoria Jimenez  
Director of Legal Services  
Harris County Sheriff's Office  
1200 Baker Street, 10<sup>th</sup> Floor  
Houston, Texas 77002

OR2020-24913

Dear Ms. Jimenez:

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# 847218 (HCSO File No. #20SO6002042).

The Harris County Sheriff's Office (the "sheriff's office") received a request for the investigative file for a specified incident. Although you take no position as to whether the submitted information is excepted by the Act, you state the sheriff's office has notified the next of kin of the deceased individual at issue of the right to submit comments to this office as to why some of the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> *Id.* § 552.101. Section 552.101 of the Government Code 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

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<sup>1</sup> As of the date of this letter, this office has not received comments from any interested third party explaining why any of the submitted information should not be released.

<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).

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 excepted from required public disclosure under common-law privacy. See Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). The 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, because “the right of privacy is purely personal,” that right “terminates upon the death of the person whose privacy is invaded.” *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 solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, some of the information at issue may pertain to a deceased individual. Therefore, to the extent the information we marked does not pertain to a deceased individual, the sheriff's office must withhold the information we marked, along with all living individuals' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, the sheriff's office may not withhold the information we marked under section 552.101 of the Government Code on the basis of common-law privacy if it pertains to a deceased individual.

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). We understand the information at issue relates to a criminal case that is now closed and none of the exceptions in section 552.1085 apply in this instance. Upon review, we find some of the remaining information consists of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the sheriff's office must withhold the information we indicated under section 552.1085(c) of the Government Code.

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 id.* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). We note the purpose of section 552.136 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, account information that pertains solely to a deceased individual may not be withheld under section 552.136. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917; ORD 272 at 1. Accordingly, to the extent the information at issue pertains to an account in which any living individual has an interest, the sheriff's office must withhold the insurance policy number we marked under section 552.136 of the Government Code.

In summary, to the extent the information we marked does not pertain to a deceased individual, the sheriff's office must withhold the information we marked, along with all living individuals' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we indicated under section 552.1085(c) 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. To the extent the information at issue pertains to an account in which any living individual has an interest, the sheriff's office must withhold the insurance policy number we marked under section 552.136 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/be

Ref: ID# 847218

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)