



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2020

Ms. Victoria Jimenez
Director of Legal Services
Harris County Sheriff's Office
1200 Baker Street, 2nd Floor
Houston, Texas 77002

OR2020-27156

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# 851354 (HSCO File# 20SO6002055).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident involving two named individuals. You state you have released some of the requested information. You also state you are withholding the requested body worn camera recordings because the requestor did not provide the information required by section 1701.661(a) of the Occupations Code.¹ Although the sheriff's office takes no position as to the disclosure of the submitted information, you state that release of this information may implicate the privacy interests of an individual. Accordingly, you state you have notified the individual of the request and of the individual's opportunity to submit comments to this office as to why his or her information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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

¹ *See* Occ. Code § 1701.661(a) (delineating specific information member of public is required to provide when submitting written request to law enforcement agency for information recorded by body worn camera).

“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 Fado 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 submitted information relates to a deceased individual, it may not be withheld from disclosure based on the deceased individual’s privacy interests. However, the sheriff’s office states it notified the interested individual, who is a family member of the deceased, of the request for information and of the individual’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 individual’s privacy interests in the information at issue. Therefore, we conclude the sheriff’s office may not withhold the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. Accordingly, the sheriff’s office must release the submitted 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 851354

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)