



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2020

Ms. Janese Dudash
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-31708

Dear Ms. Dudash:

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# 858191 (PIR No. W100243).

The City of Fort Worth (the "city") received a request for information pertaining to a specified report. You state the city will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state you have notified the next of kin in the specified death investigation of the request for information.¹ See Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requested information includes law enforcement body worn camera videos. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

(1) the date and approximate time of the recording;

¹ As of the date of this letter, we have not received any comments from the notified next of kin.

- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera videos at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 11(a) of article 49.25 of the Code of Criminal Procedure, which reads as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate . . . The records may not be withheld, subject to a discretionary exception under [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11(a). We note the submitted information contains photographs of a body taken during an autopsy. The autopsy photographs at issue are confidential pursuant to section 11 of article 49.25. We have no indication either of the statutory exceptions to confidentiality are applicable in this instance. Accordingly, we find the city must withhold the submitted autopsy photographs depicting a body under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.²

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. This section encompasses the doctrine of constitutional privacy, which consists of

¹As we are able to make this determination, we need not address the arguments against disclosure of this information.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). 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 (1981) (privacy rights lapse upon death). However, the United States Supreme Court has determined 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).

The information at issue relates to a deceased individual. Therefore, it may not be withheld from disclosure based on the deceased individual's privacy interests. However, the city informs us it notified the deceased individual's next of kin of the request for information and of their right to assert a privacy interest in the information at issue. As of this date, we have not received correspondence from any member of the deceased individual's family asserting a privacy interest in the information. Thus, we have no basis for determining a family member has a privacy interest in the information at issue. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

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. Upon review, we find the remaining information contains motor vehicle record information. We note, however, the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. See *Moore*, 589 S.W.2d at 491; see also *Justice*, 472 F. Supp. at 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229, H-917; ORD 272 at 1. Thus, section 552.130 is not applicable to the deceased individual's driver's license, and the city may not withhold it on that basis. However, the city must withhold the visually discernible license plates within the remaining information under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera videos at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the city need not release it in response to this request for information. The city must withhold the submitted autopsy photographs depicting a body under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the

Code of Criminal Procedure. The city must withhold the visually discernible license plates within the remaining information under section 552.130 of the Government Code. The city 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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/be

Ref: ID# 858191

Enc. Submitted documents

c: Requestor
(w/o enclosures)