



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 27, 2022

Ms. Tiffany Bangs  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress Street, 15th Floor  
Houston, Texas 77002-1700

OR2022-02444

Dear Ms. Bangs:

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# 927630 (File No. 21PIA0887).

The Harris County Constable's Office, Precinct Five (the "constable's office") received a request for information regarding a specified fatal accident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and 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." Gov't Code § 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual

involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual's privacy. Further, 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 Broad. 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.

Upon review, we find you have not demonstrated, and the submitted information does not reflect, this is a situation in which the submitted information must be withheld in its entirety to protect an individual's privacy interest. However, we find some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the constable's office must withhold all audible and visible living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing to a living individual and of no legitimate public concern, and the constable's office may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

We note some of the remaining information is subject to section 552.1085 of the Government Code.<sup>1</sup> Section 552.1085 provides, in pertinent part:

(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 submitted photographs and recordings, some of which consist of sensitive crime scene images, were taken at a crime scene as part of a criminal case that is now closed. Further, we note none of the exceptions in section

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<sup>1</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).

552.1085 apply in this instance. Upon review, we find the information we indicated consists of sensitive crime scene images for the purposes of section 552.1085. Therefore, the constable's office must withhold the information we indicated under section 552.1085(c) of the Government Code.

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. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *See id.*; *see also id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). We note section 552.1175 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a government body. *See Open Records Decision No. 506 at 5-6 (1988)*. Upon review, we find some of the remaining information, which we indicated, pertains to peace officers and is held by the constable's office in a non-employment capacity. Thus, to the extent the information we indicated pertains to current or honorably retired peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the constable's office must withhold the information we indicated under section 552.1175 of the Government Code; however, the constable's office may only withhold the indicated cellular telephone numbers if a governmental body did not pay for the cellular telephone services. If the individuals whose information is at issue are not a current or honorably retired peace officer or no election is made, the constable's office may not withhold this information under section 552.1175 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 Gov't Code § 552.130*. We note section 552.130 protects privacy interests. However, section 552.130 protects privacy, which 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 number. Accordingly, with the exception of the deceased individual's driver's license information, the constable's office must withhold all audible and visible driver's license information, license plate information, and registration stickers under section 552.130 of the Government Code.

In summary, the constable's office must withhold all audible and visible living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must withhold the information we indicated under section 552.1085(c) of the Government Code. To the extent the information we indicated pertains to current or honorably retired peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the constable's office must withhold the information we indicated under section 552.1175 of the Government Code; however, the constable's office may only withhold the indicated cellular telephone numbers if a governmental body did not pay for the cellular telephone services.

With the exception of the deceased individual's driver's license information, the constable's office must withhold all audible and visible driver's license information, license plate information, and registration stickers under section 552.130 of the Government Code. The constable'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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/ba

Ref: ID# 927630

Enc. Submitted documents

c: Requestor  
(w/o enclosures)