



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 10, 2022

Ms. M. Shelby Pearcy  
Counsel for the City of Rowlett  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2022-03960

Dear Ms. Pearcy:

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# 930649 (ORR# TM 126271).

The Rowlett Police Department (the "department"), which you represent, received a request for information related to a specified incident involving named individuals. We understand you will release some information to the requestor upon payment of costs. You state you will redact motor vehicle record information under section 552.130(c) of the Government Code and dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2019-21751 (2019).<sup>1</sup> 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 submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2019-21751 authorizes the City of Rowlett to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general decision.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

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 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 “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 Fadjo 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, the submitted information may not be withheld from disclosure based on the deceased individual’s privacy interests. You indicate you notified the deceased individual’s family of the request for information and of the family’s right to assert a privacy interest in the submitted information. However, as of the date of this letter, we have not received communications from any living individual asserting a privacy interest in the submitted information or objecting to its release. Therefore, the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. As you raise no further exceptions to disclosure, the department 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->

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letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

[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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/mo

Ref: ID# 930649

Enc. Submitted documents

c: Requestor  
(w/o enclosures)