



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2022

Ms. Hannah Bell
Assistant Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196

OR2022-08974

Dear Ms. Bell:

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# 938075.

The Tarrant County Sheriff's Office (the "sheriff's office") received two requests for specified information pertaining to a specified category of inmates during a defined period of time. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

¹ We note the sheriff's office did not comply with section 552.301 of the Government Code in requesting a ruling from this office. See Gov't Code § 552.301(b), (e). Nonetheless, because the exception the sheriff's office claims can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, 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 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”). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff’s office may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy. The sheriff’s office must release the r 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/mo

Ref: ID# 938075

Enc. Submitted documents

c: Requestor
(w/o enclosures)