



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 29, 2022

Mr. Siang L. Sang  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102

OR2022-09169

Dear Mr. Sang:

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# 937914 (PIR No. P002654).

The Fort Worth Police Department (the "department") received a request for the police report, photographs, and certain video footage pertaining to the death of a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, the department notified the family of a deceased individual of the right to submit comments to this office explaining why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from the next of kin of the deceased individual.

Initially, we note you have not submitted the requested police report. To the extent any information responsive to this portion of the request existed on the date the department received the request, we assume the department has released it. If the department has not

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<sup>1</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 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.

released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses constitutional privacy. Constitutional privacy consists of 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. *See* 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 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (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 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).

The submitted information relates to a deceased individual, and it may not be withheld from disclosure based solely on the deceased individual’s privacy interests. However, you state 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 information at issue. We have received comments from the deceased individual’s family asserting a privacy interest in the information at issue and objecting to its release. After reviewing the submitted comments and the information at issue, we find the family’s privacy interest in the information we have indicated outweighs the public’s interest in the disclosure of this information. Accordingly, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. However, we find the holding in *Favish* does not apply to any of the remaining information. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You state the City of Fort Worth is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;  
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state the information you indicated consists of photographs that depict police officers. You inform us the police officers depicted in the photographs at issue have not provided the department with written consent regarding the release of the photographs. You also inform us none of the remaining exceptions under section 143.090 are applicable. Accordingly, the department must withhold the photographs of police officers you indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.<sup>2</sup> See Gov't Code § 552.130. Accordingly, we find the department must withhold the visible license plate within the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The department must withhold the photographs of police officers you indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The department must withhold the visible license plate within the remaining information under section 552.130 of the Government Code. The department 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.

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/be

Ref: ID# 937914

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: 7 Third Parties  
(w/o enclosures)