



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2022

Ms. Tiffany Bangs
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2022-10201A

Dear Ms. Bangs:

This office issued Open Records Letter No. 2022-10201 (2022) on April 7, 2022. We have examined this ruling and determined we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 7, 2022. Your request was assigned ID# 940725 (Ref. Nos. 22PIA0085, 22PIA0229, 22PIA0230, 22PIA0239, 22PIA0231, 22PIA0234, 22PIA0228, 22PIA0232, 22PIA0235, 22PIA0238, 22PIA0263, 22PIA0236, 22PIA0264, and 22PIA0341).

The Harris County Institute of Forensic Sciences (the "institute") received multiple requests from different requestors for information pertaining to certain deceased individuals.¹ The institute states it released some of the requested information. The institute claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

¹ The institute states, and provides documentation showing, it sought and received clarification of one of the requests. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note some of the requests received by the institute differ in the types of information sought pertaining to the deceased individuals specified in the requests. Thus, the institute need not release information to any of the requestors that is not responsive to their respective requests.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses the doctrine of 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. 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 (5th Cir. 1985)); *see also* Attorney General Opinion JM-81 (1983) (holding that the identities of parents of victims of Sudden Infant Death Syndrome are protected by constitutional privacy); Open Records Decision No. 628 (1994).

Upon review, we find some of the submitted information, which we have indicated, implicates individuals’ privacy interests for purposes of constitutional privacy. Therefore, the institute must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy. However, we find the institute has not demonstrated any portion of the remaining information at issue falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the institute may not withhold the remaining information under section 552.101 of the Government Code on the basis of constitutional privacy.

Section 552.101 of the Government Code also 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). Upon review, we find the institute has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the institute may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the institute must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy. The institute 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/mo

Ref: ID# 940725

Enc. Submitted documents

c: Requestor
(w/o enclosures)