



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2022

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

OR2022-24840

Dear Ms. 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# 966960 (PIR# E003251-052622).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident involving 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 demonstrating, the city 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.¹

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." *Id.* § 552.101. Section 552.101 of the Government Code also 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. *See* Open Records Decision

¹ 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.

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)). However, because privacy is a personal right that lapses at death, the constitutional right to privacy does not encompass information that relates only to 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.); see also Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Nevertheless, 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).

In this instance, the submitted information relate to a deceased individual. Therefore, this information may not be withheld from disclosure based on the deceased individual's privacy interests. However, you indicate the city notified the deceased individual's next of kin of the request for information and of the next of kin's right to assert a privacy interest in the information at issue. As of this date, we have not received correspondence from any of the deceased's family members asserting a privacy interest in the information. Thus, we have no basis for determining a family member has a privacy interest in the information at issue. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The city 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-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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 966960

Enc. Submitted documents

c: Requestor
(w/o enclosures)