



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2022

Ms. Ashley D. Fourt
Assistant Criminal District Attorney
Dallas County
500 Elm Street, Records Building, Suite 6300
Dallas, Texas 75202

OR2022-36798

Dear Ms. Fourt:

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# 986844 (ORR# 22-3593).

The Southwestern Institute of Forensic Sciences (the "institute") received two requests from different requestors for records related to deaths that occurred in Dallas County during a specified time period, including an updated suicide data report. The institute states it is releasing 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 exception the institute claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The institute raises section 552.101 in conjunction with section 193.011 of the Health and Safety Code for the submitted information. Section 193.011 provides, in relevant part, the following:

(a) In this section, "authorized entity" means a medical examiner, a local registrar, a local health authority, a local mental health authority, a community mental health center, a mental health center that acts as a collection agent for the suicide data reported by community mental health centers, or any other political subdivision of this state.

(b) An authorized entity may enter into a memorandum of understanding with another authorized entity to share suicide data that does not name a deceased individual[.]

...

(f) This section does not prohibit the sharing of data as authorized by other law.

Health & Safety Code § 193.011(a)-(b), (f). Section 193.011(b) permits an authorized entity to enter into a memorandum of understanding (“MOU”) with another authorized entity to share certain types of suicide data and provides information released pursuant to such an MOU shall not name a deceased individual. However, release of the information at issue in this instance is pursuant to the Act, rather than pursuant to section 193.011. We note section 193.011 does not make information confidential in the hands of the institute for the purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Accordingly, the institute may not withhold any portion of the information at issue from the requestors under section 552.101 of the Government Code pursuant to section 193.011(b) of the Health and Safety Code. *See also id.* § 193.011(f) (permitting an authorized entity to share suicide data to the extent such use or disclosure is authorized by other law).

Section 552.101 of the Government Code 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 Fajjo 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 deceased individuals, the information may not be withheld from disclosure based on the deceased individuals' privacy interests. The institute contends members of the deceased individuals' families may have privacy interest in the information. As of this date, we have not received correspondence from any member of any deceased individual's family asserting a privacy interest in the information. Thus, we have no basis to conclude any family member has a privacy interest in the information at issue. Therefore, the institute may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

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. As noted above, because "the right of privacy is purely personal[,]" information that pertains solely to a deceased individual may not be withheld under section 552.101 of the Government Code on the basis of that individual's privacy interest. *Moore*, 589 S.W.2d at 491; *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 § 6521)); 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."); ORD No. 272. Because the submitted information pertains solely to deceased persons, we find the institute may not withhold any portion of the information under section 552.101 in conjunction with common-law privacy. The institute 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/pt

Ref: ID# 986844

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)