



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2015

Ms. Aimee Alcorn
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-13664

Dear Ms. Alcorn:

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# 570328 (CCPD File No. KTor9).

The Corpus Christi Police Department (the "department") received a request for crime scene photographs pertaining to a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the exceptions you claim 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. This section encompasses information protected by other statutes, such as section 143.090 of the Local Government Code. You state the City of Corpus Christi 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 some of the submitted information consists of photographs of police officers. You inform us the officers at issue have not provided the department with written consent regarding the release of the photographs. You further inform us none of the exceptions under section 143.090 are applicable to the information at issue. Based on your representations and our review, we conclude the department must withhold the photographs you indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code.¹

Section 552.1085 of the Government Code provides, in pertinent part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). Upon review, we find some of these photographs, which we have indicated, consist of sensitive crime scene images which must generally be withheld under section 552.1085 of the Government Code.

However, in this instance, the requestor is a member of the media and may be seeking the information in connection with or in support of the creation of an expressive work.² *See id.* § 552.1085(a)(3)(B) (defining "expressive work" to include "a work the primary function of which is the delivery of news, information, current events, or other matters of public interest or concern"); *see also id.* § 552.1085(b) ("an Internet website, the primary function of which

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

²We note section 552.1085(f) provides that a governmental body that receives a request for a sensitive crime scene image from a person described by section 552.1085(d)(4) must notify the deceased person's next of kin in writing at the next of kin's last known address within ten business days of receiving the request. *See* Gov't Code § 552.1085(f). You inform us the department has notified the deceased's next of kin.

is not the delivery of news, information, current events, or other matters of public interest or concern, is not an expressive work”). Section 552.1085(d)(4) provides that if the requestor establishes to the department she has an interest in the photographs at issue that is based on, connected with, or in support of the creation, in any medium, of an expressive work, the department may not use section 552.1085(c) to withhold the photographs at issue from this requestor. *See id.* § 552.1085(d)(4). Accordingly, if the requestor does not establish her interest in the photographs in accordance with section 552.1085(d)(4), the department must withhold the photographs we have indicated under section 552.1085(c). If, however, the requestor does establish her interest in the photographs at issue in accordance with section 552.1085(d)(4), the department may not use section 552.1085(c) to withhold the photographs we have indicated from this requestor. Further, we find the remaining information at issue does not consist of sensitive crime scene images for purposes of section 552.1085 of the Government Code and may not be withheld on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ *See id.* § 552.130(a). Accordingly, the department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

In summary, the department must withhold the photographs you indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. If the requestor does not establish her interest in the photographs in accordance with section 552.1085(d)(4) of the Government Code, the department must withhold the photographs we have indicated under section 552.1085(c) of the Government Code. The department must withhold the motor vehicle record information we have indicated 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.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³The 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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenny Moreland". The signature is fluid and cursive, with the first name "Kenny" written in a larger, more prominent script than the last name "Moreland".

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 570328

Enc. Submitted documents

c: Requestor
(w/o enclosures)