



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2017

Mr. Mark C. Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2017-06909

Dear Mr. Kratovil:

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# 651943.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for crime-scene and autopsy photographs pertaining to specified investigations. The district attorney's office states it is withholding autopsy photographs pursuant to section 11(b) of article 49.25 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 49.25, § 11(b) (governmental body may withhold photograph or x-ray taken during autopsy without requesting ruling from this office). The district attorney's office claims the submitted information is excepted from disclosure under section 552.1085 of the Government Code. We have also received comments from the family of one of the victims. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.1085(c) provides 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

¹We 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 those records contain substantially different types of information than that submitted to this office.

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). The district attorney's office states the submitted photographs were taken at a crime scene as part of a criminal case that is now closed. Upon review, we find some of the photographs at issue, which we have marked, consist of sensitive crime scene images that the district attorney's office must withhold under section 552.1085 of the Government Code.² However, the remaining photographs do not consist of sensitive crime scene images for purposes of section 552.1085, and the district attorney's office may not withhold them on that ground.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses constitutional privacy, which 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 Fadjo 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). The right to privacy is a personal right that lapses at death. *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 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 (1977))); 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."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). However, the United States Supreme Court has determined 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).

²As our ruling is dispositive, we do not address the other arguments to withhold this information.


In correspondence to this office, a family member of one of the deceased victims objects to the release of the remaining photographs of that victim. Upon review, we find the privacy interests of that deceased victim's family in the photographs outweigh the public's interest in the disclosure of this information. Therefore, the district attorney's office must withhold the remaining photographs we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

To conclude, the district attorney's office must withhold the information we have marked under section 552.1085 of the Government Code. The district attorney's office must withhold the remaining photographs we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*. The district attorney's office 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 651943

Enc. Submitted documents

c: Requestor
(w/o enclosures)