



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 19, 2017

Sheriff Buster Nixon
Mason County Sheriff
Mason County Sheriff's Office
P.O. Box 391
Mason, Texas 76856

OR2017-08346

Dear Sheriff Nixon:

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# 653984.

The Mason County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1085 of the Government Code.¹ Additionally, you state the requested information may implicate the privacy interest of a third party. Accordingly, you notified the deceased individual's next of kin of the request and of their right to submit arguments to this office explaining why the information should not be released.² See Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted photographs in response to this request. To the extent any additional information responsive to this request existed and was maintained by the sheriff's office on the date the sheriff's office received the request, we assume the

¹Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

²As of the date of this letter, we have not received comments from any interested third party.

sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). You state the responsive information relates to a criminal investigation that has not resulted in a conviction or deferred adjudication. We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case "that *did not* result in conviction or deferred adjudication." *Id.* § 552.108(a)(2) (emphasis added). Thus, having considered your representations, we find you have not demonstrated the responsive information falls within the scope of section 552.108(a)(2) of the Government Code. *See id.* § 552.301(e)(1)(A). We therefore conclude the sheriff's office may not withhold any of the submitted information under section 552.108(a)(2) of the Government Code.

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

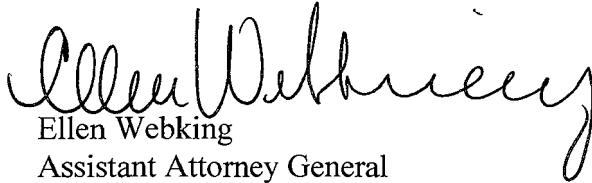
(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene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

Id. § 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 none of the submitted photographs consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the sheriff's office may not withhold the submitted information under section 552.1085(c) of the Government Code. As no other exceptions to disclosure have been raised, the sheriff's office 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 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 653984

Enc. Submitted documents

c: Requestor
(w/o enclosures)