



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2017

Mr. Carlos G. Madrid
Assistant County Attorney
County of El Paso
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2017-14270

Dear Mr. Madrid:

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# 663712 (County File No. 0205-17-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case number. You state you released most of the requested information. You claim the submitted information is 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, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

- (a) The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during

an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11(a). You state some of the submitted photographs are confidential pursuant to section 11 of article 49.25. Upon review, we find some of the information at issue consists of photographs of a body taken during an autopsy. You do not indicate either of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the sheriff's office must withhold the submitted photographs taken during an autopsy, which we indicated, under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However, the remaining photograph at issue is not a photograph or x-ray of a body taken during an autopsy. Thus, the remaining information is not confidential under article 49.25, and the sheriff's office may not withhold it under section 552.101 on that basis.

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

(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). You argue some of the remaining photographs consist of sensitive crime scene images. We understand the information at issue relates to a criminal case that is now closed. Further, you do not indicate any of the exceptions in section 552.1085 apply in this instance. Upon review, we find the photographs at issue consist of sensitive crime scene images for the purposes of section 552.1085. Thus, the sheriff's office must withhold the photographs you indicated under section 552.1085 of the Government Code.

In summary, the sheriff's office must withhold the photographs we indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The sheriff's office must withhold the photographs you indicated under section 552.1085 of the Government Code. The sheriff'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,

A handwritten signature in black ink, appearing to read 'Meagan Conway', written over a horizontal line.

Meagan Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 663712

Enc. Submitted documents

c: Requestor
(w/o enclosures)