



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 24, 2017

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2017-16518

Dear Ms. Henry:

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# 667563 (ORR # MILD050317 #CORJ060917 & MILD050317).

The Plano Police Department (the "department") received two requests from different requestors for information pertaining to a specified case number. You state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code*

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

§ 552.301(b). The department received the first request for information on May 3, 2017. Thus, the department's ten-business-day deadline was May 17, 2017. However, the department did not raise section 552.108 of the Government Code as an exception to disclosure of the submitted photographs until June 16, 2017. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting a decision with respect to the submitted photographs.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). We find the department has failed to establish a compelling reason to address its claim under section 552.108 of the Government Code for the submitted photographs. However, as the department timely raised section 552.1085 of the Government Code for the submitted photographs, we will address the department's argument under section 552.1085 for that information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted video recording relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude the department may withhold the submitted video recording under section 552.108(a)(2) of the Government Code.

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.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

(1) the deceased person's next of kin[.]

...

(e) This section does not prohibit a governmental body from asserting an exception to disclosure of a sensitive crime scene image to a person identified in Subsection (d) on the grounds that the image is excepted from the requirements of Section 552.021 under another provision of this chapter or another law.

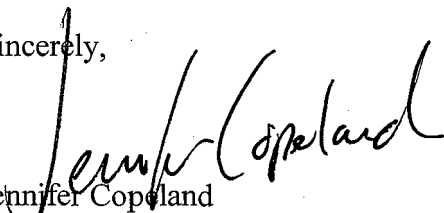
*Id.* § 552.1085(c), (d)(1), (e). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). The department asserts the submitted photographs are confidential under section 552.1085. However, upon review, we find the department has failed to establish any of the submitted photographs consists of sensitive crime scene images excepted from disclosure under section 552.1085 and the department may not withhold any of the submitted photographs on that basis.

In summary, the department may withhold the submitted video recording under section 552.108(a)(2) 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](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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/sb

Ref: ID# 667563

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)