



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2017

Ms. Celeste Baltierra
Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2017-24539

Dear Ms. Baltierra:

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# 681617 (Ref. Nos. LSan6, GRei1).

The Corpus Christi Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident involving a named individual. You state you will make some information available to the requestors. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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

¹We note the department did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b), (e). Nonetheless, because section 552.1085 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

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[.]

Gov't Code § 552.1085(c), (d)(1). 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 states the submitted photographs consist of sensitive crime scene images. We understand the information at issue relates to a criminal case that is now closed. Upon review, we find most of the submitted photographs consist of sensitive crime scene images for purposes of section 552.1085. However, we conclude one of the photographs, which we have marked for release, is not confidential under section 552.1085, and the department may not withhold it on that ground. With the exception of the photograph we have marked for release, the department must withhold the submitted photographs from the second requestor.²

We note the first requestor may represent the next of kin of the deceased person depicted in the photographs at issue under section 552.1085. *See id.* § 552.1085(a)(1) (defining "deceased person's next of kin"). In that event, the requestor would have a right to view or copy the photographs at issue pursuant to section 552.1085(d)(1). *See id.* § 552.1085(d)(1). As we are unable to determine whether the first requestor represents the deceased person's next of kin, we must rule conditionally. If the first requestor does not represent the deceased person's next of kin, then except for the photograph we have marked for release, the department must withhold the submitted photographs under section 552.1085(c) of the Government Code. If the first requestor does represent the deceased person's next of kin, then the department may not withhold the photographs at issue pursuant to section 552.1085 but, instead, must release them to him.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information from the second requestor.

demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, however, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, except for the photograph we have marked for release, the department must withhold the submitted photographs from the second requestor. If the first requestor does not represent the deceased person's next of kin, then except for the photograph we have marked for release, the department must withhold the submitted photographs under section 552.1085(c) of the Government Code.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 681617

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)