



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2017

Mr. Jason Larmon  
Assistant District Attorney  
County of Montgomery  
207 West Phillips, 2<sup>nd</sup> Floor  
Conroe, Texas 77301-2824

OR2017-24778

Dear Mr. Larmon:

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# 683085.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for photographs and video recordings related to a specified case. The district attorney's office states it will release some of the requested information. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the exceptions the district attorney's office claims 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, such as section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

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 [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], 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). The submitted autopsy photographs are confidential pursuant to section 11 of article 49.25. Upon review, we agree the photographs at issue consist of photographs of a body taken during an autopsy. The district attorney's office does not indicate either of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the district attorney's office must withhold the submitted autopsy photographs, which we have noted, under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.<sup>1</sup>

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we agree some of the remaining information, which we have noted, implicates individuals' privacy interests for purposes of constitutional privacy. Therefore, the district attorney's office withhold the information we noted under section 552.101 in conjunction with constitutional privacy.

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). The district attorney's office argues the remaining photographs consist of sensitive crime scene images that were taken at a crime scene as part of a criminal case that

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<sup>1</sup>As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

is now closed. Further, the district attorney's office states none of the exceptions in section 552.1085 apply in this instance. Based on these representations and our review, we agree some of the remaining photographs, which we have noted, consist of sensitive crime scene images for the purposes of section 552.1085. Therefore, the district attorney's office must withhold the photographs we noted under section 552.1085(c) of the Government Code. However, we find none of the remaining photographs consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the district attorney's office may not withhold the remaining photographs under section 552.1085(c) of the Government Code.

In summary, the district attorney's office must withhold the submitted autopsy photographs, which we noted, under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The district attorney's office withhold the information we noted under section 552.101 of the Government Code in conjunction with constitutional privacy. The district attorney's office must withhold the photographs we noted under section 552.1085(c) of the Government Code. 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 683085

Enc. Submitted documents

c: Requestor  
(w/o enclosures)