



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2017

Ms. Kristen Lee
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2017-26333

Dear Ms. Lee:

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# 684582 (C.A. File No. 17PIA0513).

The Harris County Institute of Forensic Sciences (the "institute") received a request for a specified autopsy report and crime scene photographs. You state some information has been released to the requestor. 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. Section 552.101 encompasses information protected by 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 institute argues the submitted information contains autopsy photographs that are confidential pursuant to section 11 of article 49.25. Upon review, we find none of the submitted information consists of photographs of a body taken during an autopsy. Accordingly, the institute may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

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.

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 state the submitted 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 some of the photographs at issue consist of sensitive crime scene images for the purposes of section 552.1085. Thus, the institute must withhold the photographs we indicated under section 552.1085 of the Government Code. However, we find the remaining information at issue does not consist of sensitive crime scene images for the purpose of section 552.1085 and may not be withheld on that basis. Accordingly, the institute 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 that reads "Emily Kunst". The signature is written in a cursive style with a large, stylized "E" and "K".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 684582

Enc. Submitted documents

c: Requestor
(w/o enclosures)