



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2019

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189-0638

OR2019-32220

Dear Mr. Day:

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# 794504 (ORR# RCCA19-08-0453).

The City of Royse City (the "city") received a request for information pertaining to a specified incident. The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.1185 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-24639 (2019). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the city must rely on Open Records Letter No. 2019-24639 as a previous determination and withhold or release the identical information, which we have marked, in accordance with that ruling.¹ We will address the city's arguments against the release of the submitted information not encompassed by Open Records Letter No. 2019-24639.

Section 552.1085(c) of the Government Code provides the following:

¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

(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 city states the photographs it has marked under section 552.1085(c) consist of sensitive crime scene images that were taken at a crime scene as part of a criminal case that is now closed. Upon review, we find some of the information at issue, which we have marked, consists of sensitive crime scene images for the purposes of section 552.1085 of the Government Code. Therefore, the city must withhold the information we have marked under section 552.1085(c) of the Government Code. However, we conclude section 552.1085 is not applicable to any of the remaining information, and the city may not withhold it on that ground.


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 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 the *Industrial Foundation* decision. *Id.* at 683. Nevertheless, because "the right of privacy is purely personal[,] that right "terminates upon the death of the person whose privacy is invaded[.]" *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting Restatement (Second) of Torts § 6521 (1977))); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). Upon review, we find none of the remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

In summary, the city must rely on Open Records Letter No. 2019-24639 as a previous determination and withhold or release the identical information, which we have marked, in accordance with that ruling. The city must withhold the information we have marked under section 552.1085(c) of the Government Code. The city 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 794504

Enc. Submitted documents

c: Requestor
(w/o enclosures)