



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2020

Mr. Thomas M. Gilliland
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street, 2nd Floor
Houston, Texas 77002-1206

OR2020-14226

Dear Mr. Gilliland:

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# 826957 (HCSO File No. 20SO6001994).

The Harris County Sheriff's Office (the "sheriff's office") received a request for multiple categories of information pertaining to a specified case. You state the sheriff's office has released some information. You also state the sheriff's office does not maintain information responsive to a portion of the request.¹ You claim some of the submitted information is excepted from disclosure under section 552.1085 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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.

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

(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:

...

(4) a person who establishes to the governmental body an interest in a sensitive crime scene image that is based on, connected with, or in support of the creation, in any medium, of an expressive work[.]

Gov't Code § 552.1085(c), (d)(4). 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 argue some of the submitted photographs consist of sensitive crime scene images. You state the information at issue relates to a criminal case that is now closed. Upon review, we find some of the information at issue, which we indicated, consists of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the sheriff's office must generally withhold the information we indicated under section 552.1085(c) of the Government Code.

However, in this instance, the requestor is a member of the media and may be seeking the information in connection with or in support of the creation of an expressive work.² *See id.* § 552.1085(a)(3)(B) (defining "expressive work" to include "a work the primary function of which is the delivery of news, information, current events, or other matters of public interest or concern"); *see also id.* § 552.1085(b) ("an Internet website, the primary function of which is not the delivery of news, information, current events, or other matters of public interest or concern, is not an expressive work"). Section 552.1085(d)(4) provides that if the requestor establishes to the sheriff's office he has an interest in the crime scene images that is based on, connected with, or in support of the creation, in any medium, of an expressive work, the sheriff's office may not use section 552.1085(c) to withhold the information at issue from this requestor. *See id.* § 552.1085(d)(4). Accordingly, if the requestor does not establish his interest in the information at issue in accordance with section 552.1085(d)(4), then the sheriff's office must withhold the information we indicated under section 552.1085(c). If, however, the requestor does establish his interest in the information at issue in accordance with section 552.1085(d)(4), the sheriff's office may not use section 552.1085(c) to withhold the information at issue from this requestor. However, in either event, we find no portion of the remaining information consists of sensitive crime scene images and the sheriff's office may not withhold any portion of the remaining information on that basis.

² We note section 552.1085(f) provides that a governmental body that receives a request for a sensitive crime scene image from a person described by section 552.1085(d)(4) must notify the deceased person's next of kin in writing at the next of kin's last known address within ten business days of receiving the request. *See Gov't Code* § 552.1085(f).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ See Gov't Code § 552.130. Accordingly, the sheriff's office must withhold all visible license plates in the remaining photographs under section 552.130 of the Government Code.

In summary, if the requestor does not establish his interest in the information at issue in accordance with section 552.1085(d)(4), then the sheriff's office must withhold the information we indicated under section 552.1085(c) of the Government Code. The sheriff's office must withhold all visible license plates in the remaining photographs under section 552.130 of the Government Code. The sheriff'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 <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,

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 826957

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).