



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2020

Ms. Jessica Williams
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-31218

Dear Ms. Williams:

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# 857744 (ORR# W106173).

The City of Fort Worth (the "city") received two requests from different requestors for photographs pertaining to a specified investigation. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. This section encompasses the doctrine of constitutional privacy, which 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)). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See 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.); Open Records Decision No. 272 (1981) (privacy rights lapse upon death). However, the United States

Supreme Court has determined surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004).

Because the information at issue relates to a deceased individual, the city may not withhold it to protect that individual's privacy interest. However, the city state it has notified the deceased individual's family members of the request for information and of their right to assert a privacy interest in the information at issue. As of the date of this decision, we have not received correspondence from the deceased individual's family requesting the information at issue be withheld. Thus, we have no basis for determining the family has a privacy interest in the information at issue. Therefore, the city may not withhold the submitted information under section 552.101 in conjunction with constitutional privacy.

Section 552.1085 of the Government Code is applicable to some of the submitted information.¹ Section 552.1085 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 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). Upon review, we find photograph numbers IMG_0033 through IMG_0059 consist of sensitive crime scene images that were taken at a crime scene as part of a criminal case that the city informs us is now closed. Thus, these photographs consist of sensitive crime scene images for the purposes of section 552.1085 of the Government Code.

However, the requestors may be the next of kin of the deceased person at issue. *See id.* § 552.1085(a)(1) (defining "deceased person's next of kin"). In that event, the requestors would have a right to view or copy the submitted photographs pursuant to section 552.1085(d)(1). *See id.* § 552.1085(d)(1). As we are unable to determine whether either

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

requestor is the deceased person's "next of kin," we must rule conditionally. If either requestor is not the deceased person's next of kin, then the city must withhold IMG_0033 through IMG_0059 under section 552.1085(c) of the Government Code. If either requestor is the deceased person's next of kin, then that requestor has a right of access to those photographs under section 552.108(d)(1) and the city must release them to that requestor.

In summary, the city must withhold photograph numbers IMG_0033 through IMG_0059 under section 552.1085(c) of the Government Code, unless a requestor has a right of access to that information pursuant to section 552.1085(d)(1) 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/mo

Ref: ID# 857744

Enc. Submitted documents

c: Requestor
(w/o enclosures)