



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 8, 2022

Ms. Rachel Raggio  
Attorney for the City of Southlake  
Taylor Olson Adkins Sralla Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2022-16482

Dear Ms. Raggio:

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# 952583.

The City of Southlake (the "city"), which you represent, received a request for specified crime scene photos. 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 552.1085 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.

(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[.]

...

(e) This section does not prohibit a governmental body from asserting an exception to disclosure of a sensitive crime scene image to a person identified in Subsection (d) on the grounds that the image is excepted from the requirements of Section 552.021 under another provision of this chapter or another law.

Gov't Code § 552.1085(c), (d)(1), (e). 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). We understand the information at issue relates to a criminal case that is now closed. Upon review, we find the information we have indicated consists of sensitive crime scene images.

However, the requestor may be the next of kin of the deceased person depicted in the photographs at issue. *See id.* § 552.1085(a)(1) (defining "deceased person's next of kin"). If the requestor is the deceased person's next of kin, then she has a right to view or copy the information at issue pursuant to section 552.1085(d)(1) of the Government Code. *See id.* § 552.1085(d)(1). Therefore, the city must withhold the photographs we have indicated under section 552.1085(c) of the Government Code, unless the requestor has a right of access to them pursuant to section 552.1085(d)(1) of the Government Code. However, we find you have failed to demonstrate any of the remaining information consists of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the city may not withhold any of the remaining information under section 552.1085(c) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *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 Broadcasting 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 § 652I (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”). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds.

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, to the extent it does not pertain solely to a deceased individual, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the photographs we have indicated under section 552.1085(c) of the Government Code, unless the requestor has a right of access to them pursuant to section 552.1085(d)(1) of the Government Code. To the extent it does not pertain solely to a deceased individual, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/jm

Ref: ID# 952583

Enc. Submitted documents

c: Requestor  
(w/o enclosures)