



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2022

Ms. Shawnta Adams
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2022-34068

Dear Ms. Adams:

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# 982264 (Reference No. R138721).

The Arlington Police Department (the "department") received a request for all information pertaining to the death of the requestor's son. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records*

Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). We note in some circumstances, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire audio statement to protect the informant's identity. *See* Open Records Decision No. 432 at 2 (1996).

You state portions of the submitted information identify complainants who reported a violation of criminal law to the department. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainants. Based upon your representations and our review, we conclude you demonstrated the applicability of the common-law informer's privilege to the information at issue. Accordingly, the department may withhold the identifying information of the reporting parties, which we marked and indicated, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.1085 of the Government Code provides, in 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 the submitted photographs consist of sensitive crime scene images that were taken at a crime scene as part of a criminal case that we understand is now closed. Therefore, submitted photographs consist of sensitive crime scene images for purposes of section 552.1085 of the Government Code. However, the requestor may be the next of kin of the deceased person. *See id.* § 552.1085(a)(1) (defining

“deceased person’s next of kin”). In that event, the requestor 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 the requestor is the deceased person’s next of kin, we must rule conditionally. If the requestor is not the deceased person’s next of kin, then the department must withhold the submitted photographs under section 552.1085(c) of the Government Code. If the requestor is the deceased person’s next of kin, then the department may not withhold any of the submitted photographs under section 552.1085(c) but, instead, must release them.

In summary, the department may withhold the identifying information of the reporting parties we marked and indicated under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The department must withhold the submitted photographs under section 552.1085(c) of the Government Code, unless the requestor has a right of access to this information pursuant to section 552.1085(d)(1) of the Government Code. The department 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 M. Graham
Assistant Attorney General
Open Records Division

JMG/pt

Ref: ID# 982264

Enc. Submitted documents

c: Requestor
(w/o enclosures)