



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2011-17387

Dear Mr. Almonte:

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# 439081.

The City of El Paso (the "city") received a request for information relating to a specified police investigation, the personnel file of a named city employee, and the employee's e-mails during a specified time period. You state you have released some information to the requestor. You state the city does not have some of the requested information.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted any of the requested e-mails for our review and for which you claim sections 552.107(1) and 552.108(a)(1). You provide documentation showing the city requested the scope of the request in regard to the e-mails be narrowed. See Gov't Code § 552.222 (providing if large amount of information is requested, governmental body may discuss with requestor how scope of request may be narrowed); see also Open

¹We note the Act does not require a governmental body to release information that did not exist when it received a request. See *Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so request may be properly narrowed). You do not indicate the city has received a response to its request for narrowing the portion of the request at issue. Thus, for the portion of the requested information for which you have not received clarification, we find the city is not required to release information in response to that portion of the request. However, if the requestor clarifies or narrows that portion of the request for information, the city must seek a ruling from this office before withholding any responsive information from the requestor.² See *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. ... The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. We note the submitted information includes autopsy photographs. We note that neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, based on our review, we find the city must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

You assert the remaining photographs are also excepted under section 552.101 of the Government Code. As noted above, section 552.101 encompasses “information that is

²As we understand your claims under sections 552.107 and 552.108 relate to the disclosure of the e-mails subject to your request for clarification, we do not address those claims in this ruling.

considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, you do not cite to any specific law, and we are not aware of any, that makes any of the remaining photographs confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Consequently, the city may not withhold the remaining photographs under section 552.101 of the Government Code.

In summary, the city must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The city must release the remaining photographs.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 439081

Enc. Submitted documents

c: Requestor
(w/o enclosures)