



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2014

Mr. L. Brian Narvaez
Counsel for the City of Eagle Pass
Langley & Banack, Inc.
401 Quarry Street
Eagle Pass, Texas 78852

OR2014-08088

Dear Mr. Narvaez:

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# 522480 (City ID# 2014-017).

The City of Eagle Pass (the "city"), which you represent, received a request for the investigative file for a specified offense. You state you will release some of the information. 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, 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.

Gov't Code § 552.1085(c). 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). The submitted information contains photographs taken at a crime scene as part of a criminal case that is now closed. However, upon review, we find the submitted photographs do not consist of sensitive crime scene images for purposes of section 552.1085 of the Government Code. Therefore, none of the submitted information may be withheld under section 552.1085 of the Government Code.

Section 552.101 of the Government Code also 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. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (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. ORD 455 at 4. 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.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 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. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). However, the United States Supreme Court has determined that 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). You state you have notified the deceased individual's family of the request for information and of their right to assert a privacy interest in the information at issue. However, as of the date of this decision, we have not received any correspondence from the deceased individual's family requesting the submitted information be withheld. Thus, we have no basis for determining the family's privacy interest in the submitted information. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. As you raise no other exceptions to disclosure, the city must release the submitted information in its entirety.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee Seidlits", with a horizontal line extending to the right.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 522480

Enc. Submitted documents

c: Requestor
(w/o enclosures)