



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2016

Ms. Paige Mebane
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-05719

Dear Ms. Mebane:

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# 601195 (Request Nos. W08061 and W048995).

The City of Fort Worth (the "city") received two requests for a specified investigation file. You state you have released some 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.

Initially, we note the city did not fully comply with section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body to ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). We note the information you have submitted as responsive to the second request is the same information you submitted as responsive to the first request. With regard to the second request, you seek to withhold the responsive information under section 552.101 of the Government Code. However, in your request for a decision to withhold the information responsive to the first request, you did not raise section 552.101 for this information. Therefore, with respect to section 552.101, we find the city violated section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code makes information confidential, it can provide a compelling reason to withhold information; therefore we will consider the city's argument under this exception. We will also consider your timely raised argument under section 552.1085 of the Government Code.

You seek to withhold the submitted information pursuant to section 552.1085 of the Government Code. Section 552.1085 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.

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). You argue the submitted photographs consist of sensitive crime scene images that were taken at a crime scene. We understand the photographs are contained in a closed criminal case. You state none of the exceptions in section 552.1085 apply in this instance. Based on your representations and our review, we agree the submitted photographs consist of sensitive crime scene images for purposes of section 552.1085. Therefore, the city must withhold the submitted photographs under section 552.1085(c) of the Government Code.¹

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.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 601195

Enc. Submitted documents

c: Requestor
(w/o enclosures)