



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2006

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2006-08403

Dear Ms. Lytle:

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# 255384.

The El Paso County District Attorney's Office (the "office") received a request for pictures of the victims in a given case. You indicate that you will release a portion of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You acknowledge that the submitted photographs were introduced into evidence at trial and are therefore subject to section 552.022 of the Government Code. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See Gov't Code* § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). You contend that the submitted photographs are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.¹ We note that information that is otherwise confidential under common-law privacy may not be withheld in a court filed

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common-law right to privacy.

document. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common law privacy not applicable to court-filed document). Accordingly, the office must release the submitted information pursuant to section 552.022(a)(17) of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Lehmann". The signature is fluid and cursive, with the first name being the most prominent.

Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/sdk

Ref: ID# 255384

Enc. Submitted documents

c: Ms. Laura Lee Prather
Jackson Walker, L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(w/o enclosures)