



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2014

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2014-21582

Dear Mr. Kopp:

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# 545025 (COSA File No. W030519).

The City of San Antonio (the "city") received a request for information, including photographs, pertaining to a fatal work-place accident. Although you take no position as to whether the requested information is excepted by the Act, you assert release of the requested photographs may implicate the interests of a third party. Accordingly, you inform this office, and provide documentation demonstrating, you notified the next of kin of the deceased individual pursuant to section 552.1085(f) of the Government Code to allow her to assert a privacy interest in the requested photographs. Section 552.1085(f) requires a governmental body that receives a request for a sensitive crime scene image from a person described by subsection (d)(4) or (5) to notify the deceased person's next of kin of the request in writing not later than the tenth business day after the date the request was received.¹ Gov't Code § 552.1085(d)(4), (5); *see also Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 1570 (2004) (recognizing surviving family members' privacy interest in information relating to

¹Subsection 552.1085(d)(4) provides a right of access to a sensitive crime scene image to a person whose interest is related to "the creation . . . of an expressive work[.]" while subsection 552.1085(d)(5) allows access by "a person performing bona fide research sponsored by a public or private institution of higher education[.]" Gov't Code § 552.1085(d)(4), (5). The requestor has not stated he is requesting the information at issue for either of those purposes.

their deceased relatives); Gov't Code § 552.304 (third party may submit written comments to this office stating why information should or should not be released). As of the date of this letter, we have not received any comments from the notified party. Thus, we have no basis for determining the notified party has a privacy interest in the requested photographs.

Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under the Act. Pursuant to subsection 552.301(e), a governmental body that receives a request for information it wishes to withhold under an exception to disclosure must submit to this office within fifteen business days of receiving the request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). As of the date of this letter, you have not submitted to this office a copy or representative sample of the requested photographs. Consequently, we find the city failed to comply with the requirements of subsection 552.301(e) regarding the photographs.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (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); Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

Although third-party interests can provide a compelling reason for non-disclosure, because you have not submitted the photographs to this office for our review, we have no basis for finding this information confidential. Thus, we have no choice but to order you to release the requested photographs in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. Furthermore, as you raise no exception to disclosure of the submitted information, the city must release it to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 545025

Enc. Submitted documents

c: Requestor
(w/o enclosures)