



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2015

Ms. Barbara J. Fox
Assistant County Attorney
Chambers County
P.O. Box 1200
Anahuac, Texas 77514

OR2015-15167

Dear Ms. Fox:

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# 572932.

Chambers County (the "county") received a request for pertaining to a specified incident. You state the county does not have information responsive to a portion of the request.¹ You also state the county has released some information. You claim the submitted photographs are excepted from disclosure under section 552.1085 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note the county did not comply with section 552.301 of the Government Code in requesting this decision. *See Gov't Code* § 552.301(b), (e). Nonetheless, because section 552.1085 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos.* 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

(1) the deceased person's next of kin[.]

Gov't Code § 552.1085(c), (d)(1). 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). Most of the submitted information consists of photographs that were taken at a crime scene as part of a criminal investigation that we understand is now closed. Upon review, except for the photograph we have indicated, the submitted photographs consist of sensitive crime scene images for the purposes of section 552.1085 of the Government Code. However, the photograph we have indicated does not consist of a sensitive crime scene image for purposes of section 552.1085 and may not be withheld on that basis.

However, in this instance, the requestor may be the next of kin of the deceased person depicted in these photographs. *See id.* § 552.1085(a)(1) (defining "deceased person's next of kin"). Accordingly, the requestor would have a right to view or copy the photographs at issue pursuant to section 552.1085(d)(1). *See id.* § 552.1085(d)(1). As we are unable to determine whether the requestor is the deceased person's next of kin, we must rule conditionally. If the requestor is not the deceased person's next of kin, except for the photograph we have indicated, the county must withhold the submitted photographs under section 552.1085(c) of the Government Code. If the requestor is the deceased person's next of kin, the county may not use section 552.1085(c) to withhold the photographs at issue from the requestor.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country

is excepted from public release.⁴ See Gov't Code § 552.130. We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Accordingly, the county must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not the deceased person's next of kin, except for the photograph we have indicated, the county must withhold the submitted photographs under section 552.1085(c) of the Government Code. The county must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The county must release the remaining information.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 572932

Enc. Submitted documents

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

c: Requestor
(w/o enclosures)