



Office of the Attorney General
State of Texas

October 27, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Tim Curry
Criminal District Attorney
Tarrant County
Justice Center, 401 W. Belknap
Fort Worth, Texas 76196-0201

OR92-630

Dear Mr. Curry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17470.

The Chief Medical Examiner of Tarrant County (the medical examiner), on whose behalf you request this open records decision, received a written request for the following records:

Any records relating to the illness and subsequent death of Erica Lynn Shoup.

Any other information that led to the ruling of homicide in the death of Erica Lynn Shoup.

This includes any investigative reports, autopsy protocol, medical records, case photographs and any materials sent to the Armed Forces Institute of Pathology in Washington, D.C.; and a copy of the subsequent report or reports returned by the Armed Forces Institute of Pathology.

You contend the requested information comes under the protection of sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.

You state that the request for information under the Open Records Act was "filed" on September 10, 1992. Your request for an open records decision from this office was postmarked September 22, 1992. Consequently, you failed to request a

decision within the 10 days required by section 7(a) of the act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

A demonstration that information is deemed confidential by law constitutes a compelling reason for withholding information. Open Records Decision No. 150 (1977). Section 5.08 of the Texas Medical Practice Act, V.T.C.S. article 4495b, provides in pertinent part:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

In accordance with section 5.08(b), the medical examiner must withhold from the public all medical records, including photographs that were developed by hospital staff to facilitate the "diagnosis, evaluation, or treatment" of the deceased. *See* Attorney General Opinion JM-229 (1984) (protection of article 4495b does not lapse upon death of patient). *See generally* Open Records Decision No. 546 (1990) (medical file that is the result of a hospital stay is *per se* "created or maintained by a physician" for purposes of article 4495b). Similarly, the medical examiner must withhold pursuant to section 5.08(c) all correspondence between his office and the Armed Forces Institute of Pathology, but only to the extent that the correspondence

contains information directly derived from the medical records of the deceased. *Cf. id.*

You have not presented compelling reasons for withholding the remaining information.¹ Accordingly, the medical examiner must release all remaining information coming within the ambit of the open records request.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-630.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/lmm

Ref: ID# 17470

cc: Ms. Jacquelynn Floyd
The Dallas Morning News
Communications Center
Dallas, Texas 75265

¹We note that the medical examiner's inquest report is specifically made public by section 11 of article 49.25 of the Code of Criminal Procedure.