



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1994

Mr. John Weddle
Legal Advisor
Sheriff Jim Bowles' Office
Frank Crowley Courts Building
133 North Industrial Boulevard
Dallas, Texas 75207-4313

OR94-244

Dear Mr. Weddle:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25615.

The Dallas County Sheriff's Department (the "county") received two open records requests for custodial death reports on certain named individuals. You state that the county does not claim any law enforcement interest in withholding the information and that you do not anticipate the county becoming a party to litigation in connection with the custodial deaths.

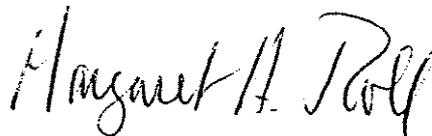
In Open Records Decision No. 521 (1989) at 5, this office held that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the Office of the Attorney General, section one of a custodial death report filed with this office is public information, but sections two through five of the report are confidential. *See* Code Crim. Proc. art. 49.18(b) ("The attorney general shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested person"). Accordingly, the county must release section one of all of the requested custodial death reports. However, because sections two through five of the reports are deemed confidential under article 49.18(b), the county may not release those sections to the requestor.

You express concern about the county releasing information in contravention of the Communicable Disease Prevention and Control Act, Health & Safety Code ch. 81. Section 81.046(b) of the Health and Safety Code makes confidential "[r]eports, records,

and information relating to cases or suspected cases of diseases or health conditions," which certain persons, including "an administrator or health official of a penal or correctional institution," are required to file with a local health authority or the regional director of a public health region established under section 121.007 of the Health and Safety Code. Because the county filed the records at issue here with the Office of the Attorney General pursuant to article 49.18(b) of the Code of Criminal Procedure, these records clearly do not fall within the scope of section 81.046(b) of the Health and Safety Code. Any information pertaining to a communicable disease that a deceased individual may have had is not confidential under section 81.046(b) where that information is found in section one of a custodial death report. *Cf.* Attorney General Opinion DM-61 (1991) (death certificate listing AIDS or HIV infection as cause of death must be released to "qualified applicant"); Open Records Decision No. 529 (1989) (autopsy reports containing AIDS tests results public). The county therefore must release the section one portions of the custodial death reports in their entirety.

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 contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/RWP/rho

Ref.: ID# 25615

cc: Ms. Denise McVea
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