



January 6, 2000

Lieutenant Arturo Valdez
Central Record Division
City of McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR2000-0050

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131694.

The City of McAllen Police Department (the “department”) received a request for a police report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You state that the requested information relates to an ongoing criminal investigation. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the department may withhold the information under section 552.108(a)(1). You state that the department has already released basic information as required by section 552.108(c). You have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

The submitted information also contains two autopsy reports. Generally, autopsy reports prepared or maintained by a medical examiner are required to be disclosed under Section 11 of article 49.25 of the Code of Criminal Procedure. However, the autopsy reports in question

were prepared by a forensic pathologist and authorized by the justice of the peace of precinct two of Hidalgo County. Subchapter A of chapter 49 of the Code of Criminal Procedure governs the release of autopsy reports prepared by a forensic pathologist under the direction and authority of a justice of the peace. *See* Crim. Proc. Code arts. 49.10(c)(1), 49.15(a). Accordingly, we must determine whether the autopsy report at issue is confidential under subchapter A of chapter 49 of the Code of Criminal Procedure.

Article 49.15 of the Code of Criminal Procedure defines the duties of a justice of the peace with respect to creating and maintaining an inquest record. Article 49.15 provides in pertinent part:

The inquest record must include a report of the events, proceedings, findings, and conclusions of the inquest. The record must also include any autopsy prepared in the case and all other papers of the case. All papers of the inquest record must be marked with the case number and be clearly indexed and be maintained in the office of the justice of the peace and be made available to the appropriate officials upon request.

(b) As part of the inquest record, the justice of the peace shall make and keep complete and permanent records of all inquest hearings.

...

(d) The justice of the peace shall certify a copy of the inquest summary report and deliver the certified copy in a sealed envelope to the clerk of the district court. The clerk of the district court shall retain the summary report subject to an order by the district court.

In addressing the question of whether article 49.15 makes the inquest record, including the autopsy report, confidential, we begin by noting the distinction between the inquest record and the inquest summary report. The inquest record must include: (1) a report of the events, proceedings, findings, and conclusions of the inquest, (2) any autopsy prepared in the case and all other papers of the case, and (3) and complete records of the inquest hearing, if a hearing was held. Crim. Proc. Code art. 49.15(a), (b). The inquest record is to be maintained in the office of the justice of the peace and be made available to the appropriate officials upon request. Crim. Proc. Code art. 49.15(a). On the other hand, the required contents of the inquest summary report are not enumerated. Article 49.15(d) directs the justice of the peace to certify a copy of the inquest summary report and deliver the certified copy to the clerk of the district court in a sealed envelope. Article 49.15(d) further states that the clerk of the district court shall retain the summary report subject to an order by the district court.

We conclude that the language of article 49.15(d) makes the inquest summary report confidential and subject to inspection only by order of the district court. *Cf.* Open Records Decision No. 495 (1988) (concluding similar language in Texas Open Meetings Act makes certified agenda or tape recording of closed meeting confidential). However, this confidentiality does not extend to the inquest record which must “be made available to the appropriate officials upon request.” Crim. Proc. Code art. 49.15(a).

Now, we consider whether the part of article 49.15(a) which states the inquest record must “be made available to the appropriate officials upon request” means that the inquest record, including the autopsy report, is confidential and subject to inspection only by “appropriate officials.” The plain language of article 49.15(d) gives appropriate officials access to inquest records, but does not constitute an explicit grant of confidentiality with regard to all other persons. *Cf.* Open Records Decision No. 478 at 2-3 (1987) (finding that statute giving individual right of access did not constitute grant of confidentiality with regard to all other persons).

On the other hand, the legislature has with clear intent made records of justices of the peace open to public inspection. Gov’t Code § 27.004. Furthermore, the legislature has explicitly deemed autopsy reports maintained by the medical examiner pursuant to article 49.25 of the Code of Criminal Procedure open to public inspection.¹ If we conclude that the language of article 49.15(a) makes inquest records, including autopsy reports, confidential, it would lead to the absurd result that autopsy reports maintained by justices of the peace pursuant to article 49.15 would be confidential and closed to public inspection, while autopsy reports maintained by medical examiners pursuant to article 49.25 are open to public inspection. When interpreting a statute, we must avoid a construction that leads to absurd consequences. *C&H Nationwide, Inc. v. Thompson*, 903 S.W.2d 315 (Tex. 1994); *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991). In order to avoid an absurd result, we conclude that article 49.15 does not make inquest records confidential. Thus, inquest records maintained under article 49.15, including autopsy reports, are open to public inspection pursuant to section 27.004 of the Government Code and the common-law right to inspect records of the judiciary. Accordingly, the department must release the autopsy reports.

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

¹However, photographs and x-rays of a body taken during an autopsy are generally not subject to required public disclosure. Code Crim. Proc. art. 49.25, §11.

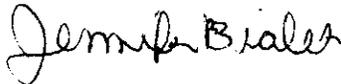
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/cwt

Ref: ID# 131694

Encl. Submitted documents

cc: Leslie Huff
10882 War Admiral Drive
Union KY 41091
(w/o enclosures)