



June 5, 2001

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2001-2316

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147979.

The Dallas County District Attorney's Office (the "district attorney") received a request for an opportunity to review all files, records, and any other documents relating to the requestor's client's case number F86-87664 including all records and documents pertaining to or arising from (1) the investigation of the crime; (2) the arrest; (3) the trial of the underlying matter or plea negotiations; and (4) the investigation or prosecution of any proceedings after trial, including motions for new trial and direct appeal. You inform us that the majority of the information contained in the file is public information and is currently available for inspection. You claim, however, that the remainder of the requested information is excepted from disclosure under section 552.108 of the Government Code and article 49.25, section 11 of the Code of Criminal Procedure. We have considered the exceptions you claim and reviewed the submitted information.

First, you assert the trial prosecutor's handwritten notes are excepted from disclosure under section 552.108(a)(3) of the Government Code. Section 552.108(a)(3) of the Government Code provides that information is excepted from public disclosure if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) information that reflects the mental impressions or legal reasoning of an attorney representing the state. Based upon your representation and our review of the submitted information, we agree the district attorney may withhold the prosecutor's handwritten notes under section 552.108(a)(3).

Next, you contend the autopsy photographs are excepted from public disclosure under article 49.25, section 11 of the Code of Criminal Procedure. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, autopsy photographs are excepted from required public disclosure and must not be released by the district attorney as neither requirement for release applies in this instance.

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 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 147979

Encl. Submitted documents

cc: Ms. Lydia Brandt
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(w/o enclosures)