



July 10, 2001

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2001-2949

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149274.

The Mesquite Police Department (the “department”) received a request for a cause of death report. You claim that the requested information is excepted from disclosure under section 552.115 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted cause of death report, which you state was prepared by the County Medical Examiner’s Office, is excepted under section 552.115 of the Government Code. Section 552.115 provides in pertinent part:

(a) A birth or death record maintained by the *bureau of vital statistics of the Texas Department of Health or a local registration official* is excepted from [required disclosure], except that:

...

(2) a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official[.]

(emphasis added). Section 552.115(a) only applies to a death record maintained by the Texas Department of Health or a local registration official. You have not informed this office that the cause of death report is maintained by a local registration official. Therefore, without having to determine whether the cause of death report is a “death record,” we conclude that section 552.115(a) is not applicable to the submitted information.

You also inquire about the applicability of section 671.013(a) of the Health and Safety Code. Section 671.013(a) provides in pertinent part:

An autopsy report shall be released on request to an authorized person in connection with the determination of the cause of death in relation to a workers' compensation or insurance claim.

Because the cause of death report was prepared by a medical examiner, we conclude that subchapter B of chapter 49 of the Code of Criminal Procedure applies to the submitted information rather than section 671.013(a) of the Health and Safety Code. Section 11 of article 49.25 of the Code of Criminal Procedure provides the following:

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 full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. 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 [emphasis added].

Therefore, records of a medical examiner concerning the cause and manner of death are subject to required disclosure. Thus, the department must release the submitted information.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 149274

Enc: Submitted documents

c: Mr. John King
Peaceful Rest Funeral Home
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Dallas, Texas 75216
(w/o enclosures)