



October 9, 2001

Mr. John W. Segrest
Criminal District Attorney
McLennan County
219 North Sixth Street, Suite 200
Waco, Texas 76701

OR2001-4558

Dear Mr. Segrest:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152374.

The Southwest Institute of Forensic Sciences ("SWIFS"), the Medical Examiner for Dallas County, received a request for an autopsy report. You indicate that because McLennan County has no Medical Examiner, SWIFS performs some autopsies for the county. You state that the autopsy at issue here was performed by SWIFS. You also indicate that the autopsy was ordered by Justice of the Peace David Pareya as part of an inquest into the death of the individual. You further indicate that Judge Pareya has asked SWIFS to withhold release of the autopsy report until he has had time to make a ruling in his inquest. You claim that the requested information "is information collected, assembled or maintained by or for the judiciary," and "under the 'judiciary exception' to the [Public Information] Act, the autopsy report is not subject to disclosure." We have considered the exception you claim.

Initially, we note that the Act does not govern access to judicial records. *See* Gov't Code §§ 552.003(1)(B) (providing that the term "[g]overnmental body" . . . does not include the judiciary"), .0035 (providing that access to information collected, assembled, or maintained by judiciary is governed by rules adopted by Texas Supreme Court or by other applicable laws and rules); *see also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ). Because a justice of the peace is a member of the judiciary, the records that a justice maintains are not subject to the Act. *See* Tex. Const. Art. V, § 1; Open Records Decision No. 25 (1974). Therefore, the Act "neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed." Open Records Decision No. 25 at 3 (1974) (construing statutory predecessor).

Please note that the Opinions Committee of the Office of the Attorney General will be issuing an opinion addressing whether a provisional autopsy report prepared in connection with an inquest by a justice of the peace is subject to inspection by members of the public. The request number for the pending request for an opinion is RQ-0380-JC.

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).

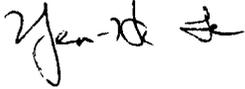
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "Yen-Ha Le" followed by a stylized flourish.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/er

Ref: ID# 152374

c: Ms. Amy Stoermer
Lyon, Gorsky, Baskett, Haring & Gilbert, L.L.P.
2501 Cedar Springs, Suite 750
Dallas, Texas 75201