



February 11, 2002

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2002-0625

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160394. .

The Lubbock County District Attorney's Office (the "district attorney") received a request for seven categories of information regarding a fatal incident that occurred at the South Plains Mall. You claim that certain requested photographs are excepted from disclosure under section 552.101 of the Government Code in conjunction with article 49.25, section 11 of the Code of Criminal Procedure. We have considered the exception you claim and reviewed the submitted information.

We first note that although the requestor sought seven types of information, you have submitted to this office and sought to withhold only these photographs. We therefore assume that you have released any responsive information you may have that falls within the other six categories. If you have not released this information and it exists, you must release it at this time. *See* Gov't Code §§ 552.301, .302.

As for the photographs, you state that they were taken during an autopsy and claim that they are therefore excepted from public disclosure under article 49.25, section 11 of the Code of Criminal Procedure in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. 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 (emphasis added). Because neither requirement for release applies in this instance, submitted photographs one through nine and fifteen through thirty-three, which are all pictures of a body taken during an autopsy, are excepted from required public disclosure under article 49.25, section 11 in conjunction with section 552.101 of the Government Code. The district attorney must not release these photographs.

However, as the emphasized language indicates, only photographs or x-rays *of a body* are made confidential by section 11. Submitted photographs ten through fourteen are not such photographs. Because you have not made any other argument as to why these photographs should be withheld and we are unaware of any other law making them confidential, you must release photographs ten through fourteen.

To summarize, you must release any information you have that falls within the six categories requestor sought and that you have not asked to withhold. You must withhold photographs one through nine and fifteen through thirty-three. You must release photographs ten through fourteen.

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).

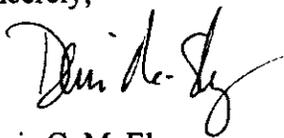
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 160394

Enc. Submitted documents

c: Mr. Jay Matthews
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(w/o enclosures)