



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 23, 2003

Ms. Melanie Barton
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2003-2715

Dear Ms. Barton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179192.

The Dallas County Medical Examiner (the "medical examiner") received a request for information relating to an autopsy, including statements provided to the medical examiner by the police department, memoranda or notes made of any verbal reports from police officers, and records that reflect the identity of the officers who provided the information. You claim that the requested information is confidential by law and relates to anticipated litigation. You also state that the Dallas Police Department has an interest in the requested information and has been notified of the medical examiner's request for this decision.¹ We have considered your arguments and have reviewed the information you submitted. We also have considered the comments that we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We first note that the medical examiner has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that

¹*See* Gov't Code § 552.305; Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

apply . . . not later than the tenth business day after the date of receiving the written request [for information].” Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

In this instance, the medical examiner did not request this decision within the ten-business-day period prescribed by section 552.301(b). Thus, the medical examiner has not complied with section 552.301 in requesting this decision. Therefore, the submitted information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. In this instance, the medical examiner claims that the submitted information is confidential by law. Therefore, we will address his arguments.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. The medical examiner claims that the submitted information is confidential under section 671.011 of the Health and Safety Code. Subchapter B of chapter 671 of the Health and Safety Code is applicable to autopsy reports. Section 671.011 provides as follows:

(a) In this subchapter, “autopsy report” includes:

(1) the report of the postmortem examination of the body of a person, including x-rays and photographs taken during the actual postmortem examination; and

(2) the toxicology report, if any, and other reports that involve an examination of the internal organs and structures of the body after dissection.

(b) An autopsy report does not include investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.

Health & Safety Code § 671.011. You indicate that the medical examiner obtained the submitted information from the Dallas Police Department in connection with an autopsy. You note that section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. You contend, however, that the submitted

information does not come within the definition of an autopsy report under section 671.011(b) of the Health and Safety Code and therefore is confidential by law and excepted from public disclosure. We disagree. Section 671.011 merely excludes certain types of information from the statutory definition of an autopsy report for purposes of subchapter B of chapter 671. This statute neither provides that the excluded information is confidential by law nor prohibits the release of such information to the public. Statutory confidentiality under section 552.101 of the Government Code requires specific language that makes certain information confidential or states that information shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987). Statutory confidentiality must be express, and a confidentiality requirement will not be implied from a statutory structure. *See* Open Records Decision No. 658 at 4 (1998); *see also* Open Records Decision Nos. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because statute designates other specific information as public information). In this instance, the information at issue is not made confidential by law under section 671.011 of the Health and Safety Code, and therefore the information is not excepted from disclosure under section 552.101 of the Government Code. The medical examiner has not otherwise demonstrated the existence of any compelling reason for non-disclosure of the submitted information. Furthermore, we have received no arguments from the Dallas Police Department with regard to this request for information. Accordingly, the submitted information must be released in its entirety.

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

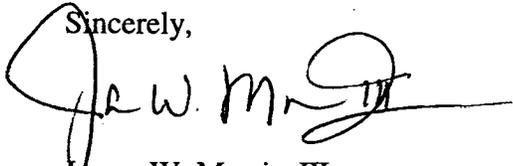
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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 Dep't of Pub. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 179192

Enc: Submitted documents

c: Mr. Paul Clarkson
4006 Shady Hollow Lane
Dallas, Texas 75233
(w/o enclosures)