



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2006

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2006-12565

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 261528.

The Tarrant County Medical Examiner's Office (the "medical examiner") received a request for all records concerning the investigation into the death of a named individual, including the autopsy report and photographs. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. This section provides, in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation. This information must be released under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You do not raise section 552.108. Instead, you assert the submitted information is protected under a court order and is, therefore, excepted from disclosure under section 552.101. Although you raise section 552.101 in conjunction with the court order, we note that the appropriate exception to raise is section 552.107(2). Section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by subsection (a) unless the category of information is expressly made confidential under other law. Gov't Code § 552.022(b).

We note that the submitted autopsy photos are confidential under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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. The submitted information does not indicate that the exceptions to confidentiality provided in section 11 of article 49.25 are applicable in this instance. Therefore, we conclude that the medical examiner must withhold the submitted autopsy photographs under section 552.101 of the Government Code as information made confidential by law.

The medical examiner, however, has not demonstrated that the remaining submitted information is otherwise confidential by law. Furthermore, we are not aware of any other law that the court has relied on that makes this information confidential. Thus, we conclude that the remaining submitted information is public information and must be released pursuant to section 552.022(a)(1).

In summary, the medical examiner must withhold the submitted autopsy photographs under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

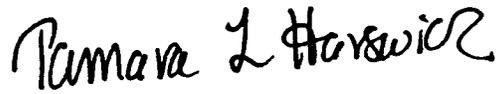
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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 that reads "Tamara L. Harswick". The signature is written in a cursive, slightly slanted style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 261528

Enc. Submitted documents

c: Ms. Mona P. Brunson
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(w/o enclosures)