



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2007

Ms. Holly C. Lytle  
Assistant County Attorney  
County of El Paso  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2007-05750

Dear Ms. Lytle:

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# 278439.

The El Paso County Medical Examiner's Office (the "medical examiner") received a request for the autopsy report and other information related to the death of a named individual. You state you have released some responsive information but claim the submitted photographs are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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, such as section 11 of article 49.25 of the Code of Criminal Procedure, which 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. You indicate that the exceptions to confidentiality provided in section 11 of article 49.25 are not applicable in this instance. Therefore, we conclude that the medical examiner must withhold the autopsy photographs under section 552.101 of the Government Code as information made confidential by law. The remaining photographs taken at the scene are not autopsy photographs and thus article 49.25 is not applicable to these photographs.

Section 552.101 also encompasses the doctrine of common-law privacy. Gov't Code § 552.101. In order for information to be protected under common-law privacy, it must both (1) contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) not be of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We note that the right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). *But see* Attorney General Opinion JM-229 (1984) (if release of information about deceased person reveals highly intimate or embarrassing information about living persons, that information must be withheld under common-law privacy). However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). In this instance, you inform us that you notified the attorney who represents the deceased individual's next-of-kin of the request and of the family member's right to assert a privacy interest in the release of the death-scene photographs. You inform us that the attorney expressly waives any privacy interest his client may have in the death-scene photographs. Thus, we have no basis for determining that the family of the deceased individual has any privacy interest in the photographs at issue. Therefore, the photographs are not protected by common-law privacy under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. We note that section 552.130 does not apply to out-of-state motor vehicle record information. We also note that section 552.130 protects the privacy interest of the individual, and because that right of privacy is purely personal, it lapses upon death. *See Moore*, 589 S.W.2d 489; *see also* Attorney General Opinions JM-229 (1984);

H-917 (1976); Open Records Decision No. 272 at 1 (1981). Thus, motor vehicle information pertaining only to deceased persons may not be withheld under section 552.130. Accordingly, to the extent the submitted Texas motor vehicle record information pertains to a living person or a vehicle owned by a living person, it must be withheld under section 552.130; however, this information may not be withheld under section 552.130 if it pertains only to a deceased individual.

In summary, the medical examiner must withhold the autopsy photographs under section 552.101 of the Government Code in conjunction with article 49.25 of the Code of Criminal Procedure. To the extent the submitted Texas motor vehicle record information pertains to a living person or a vehicle owned by a living person, it must be withheld under section 552.130 of the Government Code. 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).

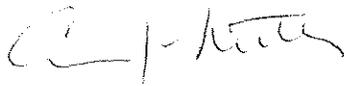
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 278439

Enc. Submitted documents

c: Ms. Louise A. Elorreaga  
Paralegal to Daniel H. Hernandez  
Ray, Valdez, McChristian & Jeans  
5822 Cromo Drive  
El Paso, Texas 79912  
(w/o enclosures)