



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 7, 2008

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

OR2008-06257

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# 309697.

The Tarrant County Medical Examiner's Office (the "medical examiner") received a request for information pertaining to two named deceased individuals. You state that a portion of the requested information will be released to the requestor. You claim that some of the remaining requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by attorneys representing the deceased individuals' families. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request for information. The request seeks information pertaining to two named deceased individuals. Accordingly, any information that does not pertain to the two named individuals is not responsive to the current request. The medical examiner need not release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with article 49.25 of the Code of Criminal Procedure. Section 11 of article 49.25 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.

Crim. Proc. Code art. 49.25. You have submitted a compact disc containing autopsy photographs. Because neither of the statutory exceptions to confidentiality is applicable in this instance, we agree that the medical examiner must withhold the submitted autopsy photographs pursuant to section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. *See also Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

To demonstrate the applicability of the common-law privacy exception under section 552.101, a person must affirmatively establish both prongs of the test articulated in *Industrial Foundation*. 540 S.W.2d at 681-82. Because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). The United States Supreme Court has determined, however, 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, the attorneys representing the deceased individuals' families argue that the suicide note should be excepted from disclosure based upon common-law privacy. After carefully reviewing all of the submitted comments and the suicide note, we find that although the note does reference one or more family members, it

does not contain any information pertaining to them or any other living individual that is highly intimate or embarrassing. Therefore, we conclude that the suicide note may not be withheld under section 552.101 in conjunction with the right to common-law privacy.

You raise section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Upon review, however, we find the remaining submitted documents do not contain any information subject to section 552.130. Thus, this section is inapplicable to the submitted information.

You also raise section 521.052 of the Transportation Code. We note that subchapter C of 521 of the Transportation Code is applicable to the Department of Public Safety (the "DPS"). See Transp. Code §§ 521.001, 521.041 *et seq.* Section 521.052 of the Transportation Code states that "[e]xcept as provided by Sections 521.045, 521.046, 521.049(c), 521.050, and 601.022, and by Chapter 730 [of the Transportation Code], the [DPS] may not disclose information from the [DPS]'s files that relates to personal information, as that term is defined by Section 730.003 [of the Transportation Code]." Transp. Code § 521.052. Thus, section 521.052 specifically regulates the disclosure of information by the DPS. As the submitted information is maintained by the medical examiner and not DPS, section 521.052 is not applicable in this instance.

Finally, you raise section 552.147 of the Government Code. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ Gov't Code § 552.147(a). However, upon review we find the remaining submitted documents do not contain social security numbers. Thus, section 552.147 is inapplicable to the submitted information.

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 information must be released.

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 file suit in

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 309697

Enc. Submitted documents

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