ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2008

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

OR2008-09960

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# 321089.

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 will release some responsive information but claim the submitted autopsy photographs are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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.

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 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). If the governmental body does not file suit over 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,

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/sdk

Ref: ID# 321089

Enc. Submitted documents

c: Marshall's Business Records
ATTN: Valarie Menard
802 North Carancahua, Suite 670
Corpus Christi, Texas 78470-0800
(w/o enclosures)