



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2009

Ms. Celia Gamez, C.S.S. - C.L.
Crime Records Bureau
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2009-11014

Dear Ms. Gamez:

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# 351645.

The McAllen Police Department (the "department") received a request for photographs of a specified accident and autopsy. You claim that the submitted 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.

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, § 11. Provided that neither of the statutory exceptions to confidentiality is applicable in this instance, we agree that the department must withhold the submitted autopsy photographs we have marked pursuant to section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. We note, however, that the remaining photographs are not autopsy photographs, but rather photographs taken of the crime scene. Because the photographs taken at the crime scene are not autopsy photographs, article 49.25 is not applicable to these photographs and they may not be withheld under section 552.101 on that basis.

We note the remaining photographs contain a Texas driver's license and a Texas license plate number that are excepted from disclosure under section 552.130 of the Government Code.¹ 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 [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the department must withhold the photographs of the Texas driver's license and Texas license plate number we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the autopsy photographs we have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The department must also withhold the photographs of the Texas driver's license and Texas license plate number we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

¹The Office of the Attorney General will generally raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/sdk

Ref: ID# 351645

Enc. Submitted documents

c: Requestor
(w/o enclosures)