



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2009

Ms. Christina Sanchez  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio Room 503  
El Paso, Texas 79901

OR2009-11346

Dear Ms. Sanchez:

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# 356678.

The El Paso Medical Examiner's Office (the "medical examiner") received a request for information relating to a specified file, including photographs. You state that most of the responsive information has been released. You claim that 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.

We first note, and you acknowledge, that the medical examiner did not comply with his deadlines under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b), (e). Under section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address that exception.

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 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:

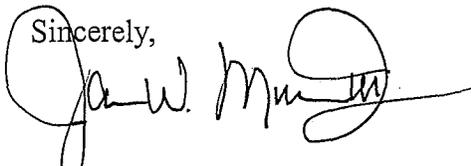
- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

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 medical examiner must withhold the submitted autopsy photographs pursuant to section 11 of article 49.25 of the Code of Criminal Procedure.

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](http://www.oag.state.tx.us/open/index_orl.php), 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 356678

Enc: Submitted information

c: Requestor  
(w/o enclosures)