



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 25, 2011

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2011-05589

Dear Ms. Monteros:

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# 415435 (CA-OP-11-037).

The El Paso County Medical Examiner's Office (the "medical examiner") received a request for all records, including several specified categories of information, for a specified time period pertaining to a named deceased individual. You state the medical examiner has provided most of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.119, 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 other statutes make confidential, such as section 11 of article 49.25 of the Code of Criminal Procedure, which provides:

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 [the Act], except that a photograph or x-ray of a body taken *during an autopsy* is excepted from required public disclosure in accordance with [the Act], 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 (emphasis added). You claim the submitted photographs of the decedent's body are excepted from disclosure under section 11 of article 49.25 of the Code of Criminal Procedure. This provision excepts from required public disclosure a photograph or x-ray of a body taken during an autopsy. In this instance, however, you explain the medical examiner examined the decedent's body to simply confirm the immediate cause of death, but "an 'autopsy' of the decedent was not conducted." Based on your representation the photographs at issue were not taken during an autopsy, we find you have failed to demonstrate the applicability of section 11 of article 49.25 of the Code of Criminal Procedure to these photographs. Consequently, the medical examiner may not withhold the photographs at issue pursuant to section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. As you have not claimed any other exceptions to disclosure for the photographs of the decedent, they must be released.¹

You claim a photograph of a peace officer is excepted under section 552.119 of the Government Code, which provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

¹In this instance, we need not address any privacy interest the decedent's family may have in some of the photographs based on *National Archives & Records Administration v. Favish*, 124 S. Ct. 1570 (2004), because the requestor has provided an authorization to release information signed by the decedent's authorized representative.

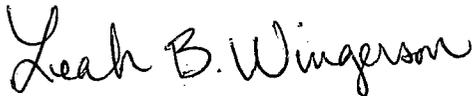
Gov't Code § 552.119. By its terms, section 552.119 applies only to photographs of licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. *Id.* § 552.119(a). Under section 552.119, a governmental body must demonstrate release of the photograph would endanger the life or physical safety of a peace officer. In this instance, however, you state "it is not readily ascertained that the release of the photograph would endanger the life or physical safety of the officer." Thus, based on your representation, we find you have failed to demonstrate how release of the officer's photograph would endanger the officer's life or physical safety. Consequently, the medical examiner may not withhold the officer's photograph under section 552.119 of the Government Code. As you have not claimed any other exceptions to disclosure for the officer's photograph, it must be released.

You assert a license plate number in the remaining information is excepted from disclosure under section 552.130 of the Government Code. This section provides information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(2). Thus, the medical examiner must withhold the Texas license plate number at issue under section 552.130 of the Government Code.² 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, 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eeg

²We note this office issued Open Records Decision No. 684 (2009), which acts as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 415435

Enc. Submitted documents

c: Requestor
(w/o enclosures)