



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 3, 2009

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

OR2011-11851

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# 426960 (CA – OP-11-229).

The El Paso County Medical Examiner's Office (the "medical examiner") received a request for information pertaining to a named individual. You state the medical examiner will release some responsive information. You claim the remaining responsive information is excepted from disclosure under sections 552.101, 552.108, 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 protected by other statutes. You claim the submitted photographs are excepted from disclosure under section 11 of article 49.25 of the Code of Criminal Procedure, which is encompassed by section 552.101 of the Government Code and 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 [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, § 11. We agree the submitted photographs are photographs of bodies taken during an autopsy. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Therefore, the medical examiner must withhold the submitted photographs under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

You seek to withhold the submitted page from a responsive incident report under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the responsive incident report pertains to a case that has been closed without charges filed, and thus ended in a result other than conviction or deferred adjudication. Thus, based on your representation and our review, we agree the medical examiner may withhold the submitted page from that report under section 552.108(a)(2) of the Government Code.

Finally, you claim the submitted copy of a Texas driver's license is excepted by section 552.130 of the Government Code. Section 552.130 provides that "[i]nformation is excepted from the requirements of [the Act] if the information relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country[.]" Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)). The medical examiner must withhold the submitted copy of a driver's license under section 552.130 of the Government Code.<sup>1</sup>

In summary, the medical examiner must withhold the submitted autopsy photographs under section 552.101 of the Government Code in conjunction with article 49.25 of the Code of

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<sup>1</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Criminal Procedure. The medical examiner may withhold the submitted incident report page under section 552.108(a)(2) of the Government Code. The medical examiner must withhold the submitted copy of a driver's license under section 552.130 of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

Ref: ID# 426960

Enc. Submitted documents

c: Requestor  
(w/o enclosures)