



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2012

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

OR2012-02859

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# 446285 (CA-OP-11-490).

The El Paso County Medical Examiner's Office (the "medical examiner's office") received a request for reports, medical records, notes, photographs, and other information pertaining to a named deceased individual. You state the medical examiner's office has released some of the requested information. You claim the submitted 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.

We note you have submitted as responsive a photocopy of a driver's license which the medical examiner's office obtained when the individual was provided with a copy of an autopsy report after the instant request for information was received. Thus, the driver's license, which we have marked, is not responsive to the instant request. Therefore, this decision does not address the public availability of the marked driver's license, and that information need not be released in response to this request.

Next, we note the submitted information contains a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following

three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has provided the medical examiner's office with two of the three pieces of information pursuant to section 550.065(c)(4). Although you contend some information in the accident report is excepted from disclosure under section 552.130 of the Government Code, a statute governing the release of specific information prevails over the exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the medical examiner's office must release the CR-3 accident report in its entirety to the requestor pursuant to section 550.056(c)(4) of the Transportation Code.

You seek to withhold the submitted autopsy photographs under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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.

Crim. Proc. Code art. 49.25, § 11. You state the submitted photographs of the deceased were taken during an autopsy. You represent neither of the statutory exceptions to confidentiality is applicable in this instance. Based on your representations and our review, we determine the medical examiner's office must withhold the submitted autopsy photographs under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

You claim a photograph of an 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.

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, you state "officers along the border have . . . dangerous duties which also involve undercover operations . . . and release of the photograph could endanger the [officer.]" Based on your representations and our review of the information at issue, we conclude that if the officer depicted in the submitted photograph is a peace officer under article 2.12 of the Code of Criminal Procedure, the medical examiner's officer must withhold the photograph at issue under section 552.119 of the Government Code. If he is not a peace officer under article 2.12, the medical examiner's office may not withhold the photograph under section 552.119.

In summary, the medical examiner's office must release the CR-3 accident report in its entirety to the requestor pursuant to section 550.056(c)(4) of the Transportation Code. The medical examiner's office must withhold the submitted autopsy photographs under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. If the officer depicted in the submitted photograph is a peace officer under article 2.12 of the Code of Criminal Procedure, the medical examiner's officer must withhold his photograph under section 552.119 of the Government Code. The remaining responsive 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 446285

Enc. Submitted documents

c: Requestor
(w/o enclosures)