



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2012

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

OR2012-09306

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# 456371 (El Paso Reference No. CA-OP-12-133).

The El Paso Medical Examiner's Office (the "medical examiner's office") received a request for files, chart notes, questionnaires, tests, telephone notes, computer records, medical records, medical reports, prescriptions, and any other medical information concerning a named individual from October 21, 2010 to the date of the request. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 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. Section 552.101 encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the

accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the medical examiner's office with the date of the accident and the name of a person involved in the accident. Therefore, the medical examiner's office must release the submitted CR-3 accident report form to this requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.101 of the Government Code also 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 [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. You contend the submitted information contains autopsy photographs. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Upon review, we agree that the medical examiner's office must withhold the photographs we have indicated on the submitted compact disc under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However, we note the remaining photographs on the submitted compact disc are not photographs of a body taken during an autopsy. Therefore the remaining photographs may not be withheld under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Laws making this type of information confidential are intended to protect an individual's privacy. *See id.* § 560.003. Because the right of privacy is purely personal and lapses at death, the fingerprints of a deceased individual may not be withheld on the basis of sections 560.001, 560.002, and 560.003. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (right of privacy

is purely personal and lapses upon death); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-67 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). The fingerprints in the photograph labeled "10-0543 Autopsy-29-1" on the submitted compact disc belong to a deceased individual. Therefore, the medical examiner's office may not withhold the fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; a motor vehicle title or registration issued by an agency of this state or another state or country; or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document. Gov't Code § 552.130(a). The photograph labeled "10-0543-34-1" on the submitted compact disc depicts a license plate number, which is subject to section 552.130. Although you contend the entire photograph should be withheld, we note the photograph may be printed out, which would make it possible for the medical examiner's office to redact the information at issue by marking out the information on the printed photograph. Accordingly, the medical examiner's office must withhold the license plate number in the photograph labeled "10-0543-34-1" under section 552.130 of the Government Code.

In summary, the medical examiner's office must withhold the photographs we have indicated on the submitted compact disc under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure and the license plate number in the photograph labeled "10-0543-34-1" on the submitted compact disc under section 552.130 of the Government Code. The remaining information must be released.

You also ask this office to issue a decision authorizing the medical examiner's office to withhold autopsy photographs subject to section 11 of article 49.25 of the Code of Criminal Procedure without the necessity of asking this office for a ruling. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. Accordingly, 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,

A handwritten signature in black ink, appearing to read 'BAB', written over a horizontal line.

Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

Ref: ID# 456371

Enc. Submitted documents

c: Requestor
(w/o enclosures)