



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2012

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
Lubbock County District Attorney's Office
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2012-18781

Dear Ms. Clarke:

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# 474524.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for any and all investigation notes, autopsy report, toxicology reports, and photographs pertaining to the death of a named individual. You state the medical examiner's office will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the medical examiner's office's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the medical examiner's office received the request for information on October 1, 2012. Accordingly, the medical examiner's office's ten-business-day deadline was October 15, 2012. The envelope in which the medical examiner's office submitted a request for a ruling bears a postmark of October 16, 2012. *See id.* § 552.308 (providing ten-day

requirement met if request bears post office cancellation mark indicating time within ten-day period). Consequently, we find the medical examiner's office failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302 of the Government Code); *see also Open Records Decision No. 630* (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *Open Records Decision No. 150 at 2* (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the requested 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, such as 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 state the submitted information consists of photographs of a body taken during an autopsy that are confidential pursuant to section 11 of article 49.25. Upon review, we agree most of the photographs at issue consist of photographs of a body taken during an autopsy. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the medical examiner's office must withhold the photographs we have indicated under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However,

we note the remaining photographs do not consist of photographs of a body taken during an autopsy. These remaining photographs are not confidential under article 49.25, and the medical examiner's office may not withhold them under section 552.101 on that basis. The medical examiner's office must release the remaining information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 474524

Enc. Submitted documents

c: Requestor
(w/o enclosures)