



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2014

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Mr. Andrew Warthen  
Assistant Criminal District Attorney  
Civil Section  
County of Bexar  
300 Dolorosa, 5<sup>th</sup> Floor  
San Antonio, Texas 78205-3030

OR2014-16376

Dear Mr. Warthen:

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# 536199.

The Bexar County Medical Examiner's Office and the Bexar County District Attorney's Office (collectively the "county") each received a request for all photographs, including autopsy photographs, of a named individual. The Bexar County District Attorney's Office also received a request for the custodial death report pertaining to the named individual's death. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we note the requested information contains a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides the Office of the Attorney General (the "OAG") shall make the custodial death report available to any interested person, with the exception of any portion of the report the OAG determines is privileged. *See* Crim. Proc. Code art. 49.18(b). You argue article 49.18 is inapplicable to actions occurring in Bexar County because the county has a medical examiner's office and article 49.18 is in

subchapter A of chapter 49, which governs a death occurring in a county that does not have a medical examiner's office. *See id.* art. 49.02. We note, however, when a county establishes an office of a medical examiner, "all powers and duties of justices of the peace in such county relating to the investigation of deaths and inquests shall vest in the office of the medical examiner." *Id.* art 49.25, § 12. Thus, we find by the medical examiner's office assuming the duties of justices of the peace, article 49.18 of the Code of Criminal Procedure also applies to the county.

In Open Records Decision No. 521 (1989), this office addressed the confidentiality of custodial death reports and their attachments. Specifically, this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the OAG, Part I of a custodial death report filed with this office is public information, but Parts II through V of the report, including any attachments, are confidential. *See* ORD 521 at 4-5 (1989). The format of the report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The OAG has determined the four-page report and summary must be released to the public but any other documents submitted with the revised report are confidential under article 49.18(b). You claim the submitted custodial death report is excepted from disclosure under section 552.108 of the Government Code and it is not the county's obligation to release this report. However, we note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the county must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure.

You seek to withhold the submitted autopsy photographs under section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

(a) 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 may not be withheld, subject to a discretionary exception under 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.

(b) Under the exception to public disclosure provided by Subsection (a), a governmental body . . . may withhold a photograph or x-ray described by

Subsection (a) without requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code. This subsection does not affect the required disclosure of a photograph or x-ray under Subsection (a)(1) or (2).

Crim. Proc. Code art. 49.25, § 11. You state the submitted autopsy photographs are confidential pursuant to section 11 of article 49.25. However, as the submitted custodial death report reflects, the autopsy photographs pertain to an individual who died while in custody of law enforcement. Photographs taken of the body of a person who died while in custody of law enforcement are public and not confidential. *Id.* § 11(a)(2). Therefore, the autopsy photographs at issue may not be withheld under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. Although you seek to withhold these photographs under section 552.108 of the Government Code, as noted above, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* ORD Nos. 623 at 3, 525 at 3. Thus, the submitted autopsy photographs must be released to the requestor.

We now address your arguments against disclosure of the remaining submitted crime scene photographs. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You object to disclosure of the submitted photographs because release would interfere with an ongoing criminal case. Based on your representation, we conclude release of the remaining crime scene photographs would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the county may withhold the remaining crime scene photographs under section 552.108(a)(1) of the Government Code.

In summary, the county must release the submitted custodial death report and autopsy photographs. The remaining crime scene photographs may be withheld under section 552.108(a)(1) 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/som

Ref: ID# 536199

Enc. Submitted documents

c: Requestor  
(w/o enclosures)