



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2014

Mr. Tim Wyatt  
Public Information Coordinator  
County of Collin  
2300 Bloomdale Road, Suite 4154  
McKinney, Texas 75071

OR2014-21826

Dear Mr. Wyatt:

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# 545297.

The Collin County Medical Examiner's Office (the "county") received a request for information related to a specified incident. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1085 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, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

(a) The medical examiner's office 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 [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(a). You assert the submitted photographs are confidential pursuant to section 11 of article 49.25; however, you inform us the requestor in this instance argues some of the photographs at issue are not photographs of an autopsy, but rather of an examination not subject to article 49.25 of the Code of Criminal Procedure. You provide a representation from the county medical examiner's office that some of the submitted photographs "were part of an external examination that was, in fact, an autopsy that . . . did not call for [the county's medical examiner] to dissect the body of [the decedent]." The county's medical examiner's office further states the "photographs from the external examination are treated the same as formal autopsy photos by [the county medical examiner's] office and were . . . taken at [the county medical examiner's] facility in the same process as that of a formal autopsy." Further, you state the county medical examiner's office informs you that "a report was generated just the same as an autopsy report, with an accompanying toxicology screen." Based on these representations and our review of the information at issue, we agree the photographs in Exhibit B consist of photographs of a body taken during an autopsy for purposes of section 11 of article 49.25. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the county must withhold the autopsy photographs in Exhibit B 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 do not consist of photographs of a body taken during an autopsy. These remaining photographs are not confidential under article 49.25, and the county may not withhold them under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. As you acknowledge, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); see Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). We note the remaining information pertains to a deceased individual. Accordingly, the county may not withhold any of the submitted information based upon the

privacy interests of the deceased individual. Therefore, the county may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). However, as noted above, the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Nevertheless, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004). As of the date of this decision, we have not received any correspondence from the deceased individual's family. Thus, we have no basis for determining the family has a privacy interest in the submitted information. Further, we conclude none of the submitted information falls within the zones of privacy or otherwise implicates a living individual's privacy interests for the purposes of constitutional privacy. Therefore, the county may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.1085 of the Government Code provides, in pertinent part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). We understand the photographs in Exhibit C are part of a closed criminal case. Accordingly, upon review, we find some of these photographs, which we have marked, consist of sensitive crime scene images which must be withheld under section 552.1085 of the Government Code. However, we find the remaining information at issue does not consist

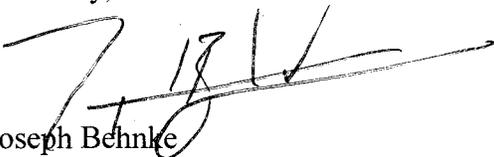
of sensitive crime scene images for purposes of section 552.1085 of the Government Code and may not be withheld on that basis.

In summary, the county must withhold the autopsy photographs in Exhibit B under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The county must withhold the information we have marked under section 552.1085 of the Government Code. The county 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.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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 545297

Enc. Submitted documents

c: Requestor  
(w/o enclosures)