



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2016

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

OR2016-19356

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# 630036.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to the autopsy of a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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 shall keep full and complete records properly indexed, giving the name if known of every person whose death is

¹We note the medical examiner's office failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. See Gov't Code §§ 552.007, .301, .302., .352. Accordingly, we will consider the medical examiner's office's argument under section 552.101 of the Government Code.

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.

Crim. Proc. Code art. 49.25, § 11(a). You state the submitted photographs are confidential pursuant to section 11 of article 49.25. Upon review, we agree some of the photographs at issue consist of photographs of bodies taken during an autopsy. We understand neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the medical examiner's office must withhold the autopsy photographs depicting a body 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 medical examiner's office may not withhold them under section 552.101 on that basis. As no further exceptions to disclosure have been raised, the medical examiner's office must release the remaining photographs.

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, 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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/bw

Ref: ID# 630036

Enc. Submitted documents

c: Requestor
(w/o enclosures)