



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 25, 1989

Ms. Marilyn Bradley
Assistant Criminal District Attorney
42nd, 104th, and 350th Judicial
Districts of Texas
Taylor County Courthouse
Abilene, Texas 79602

Dear Ms. Bradley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7672; this decision is OR89-342.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. Attorney General Opinion H-436 (1974). The act does not require this office to raise and consider exceptions that you have not raised.

The Justice of the Peace, Place One, for Taylor County received an open records request for a copy of "the full and complete autopsy and/or inquest report" on a particular individual. You inquire whether this information must be released.

We initially note that the office of the Justice of the Peace is part of the judiciary, see Tex. Const. art. V, § 1, and, because of the judicial nature of inquest hearings, is therefore exempt in this instance from the provisions of the Open Records Act. See V.T.C.S. art. 6252-17a, § 2(1)(G); see also Open Records Decision No. 25 (1974). But see

Benavides v. Lee, 665 S.W.2d 151 (Tex. App.- San Antonio 1983, no writ) (Webb County Juvenile Board is not an extension of the judiciary merely because it is composed of members of the judiciary). Consequently, the provisions of the Open Records Act cannot be applied to your request. This ruling will discuss, however, the public's general right of access to the requested documents.

Section 11 of article 49.25 of the Code of Criminal Procedure provides that autopsy reports are public records. See Open Records Decision No. 21 (1974); see also Open Records Decision No. 529 (1989). Consequently, you should release the autopsy report in its entirety without delay.

On the other hand, subsection (a) of article 49.15 provides that the inquest record prepared by the justice of the peace must be made available to "the appropriate officials upon request," and subsection (d) of the same article requires that:

The justice of the peace shall certify a copy of the inquest summary report and deliver the certified copy in a sealed envelope to the clerk of the district court. The clerk of the district court shall retain the summary report subject to an order by the district court.

The language of these two subsections of article 49.15 does not state that the inquest record is confidential. We note, however, that inquest hearings are not necessarily closed to the public and that where a person has been arrested in connection with the death of the deceased, such person and his counsel have the right to attend the inquest, examine witnesses, and introduce evidence. See Code Crim. Proc. art. 49.14(d). We further note that evidence introduced during the inquest hearing is admissible during a related criminal trial. Stanley v. State, 74 S.W. 318 (Tex. Crim. App. 1903). In determining whether to release the inquest report, this office suggests that the Justice of the Peace weigh the due process rights of any criminal defendant against the public's common-law right to access to documents filed in his court. Cf. Palacios v. Corbett, 172 S.W. 777 (Tex. Civ. App. - San Antonio 1915, writ ref'd).

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Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-342.

Yours very truly,

*Open Government Section
of the Opinion Committee*
Open Government Section
of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/RWP/le

Ref.: ID# 7672

cc: Dan Malone
Lorraine Adams