



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 12, 1995

Jeffrey Barnard, M.D.  
Dallas County Medical Examiner  
5230 Medical Center Drive  
Dallas, Texas 75235

OR95-277

Dear Dr. Barnard:

As Dallas County Medical Examiner, you have received two requests under the Texas Open Records Act, chapter 552 of the Government Code, for all documents held by your office pertaining to the autopsy of Sharon Reeves. You did not seek an open records decision from this office with regard to these requests, but rather asked Ms. Sandy S. Gately, 52nd Judicial District Attorney, to submit her arguments to this office as to why any of the requested information should be withheld from the public. By so doing, we presume that your office has no interests of its own in withholding the requested information. *See, e.g.*, Open Records Decision No. 325 (1982) (failure to raise statutory exceptions to required public disclosure effects waiver of those exceptions). However, because you cannot waive another entity's law-enforcement interests, *see* Open Records Decision No. 586 (1991), we will consider Ms. Gately's claims. Ms. Gately's correspondence to this office was assigned ID# 32630.

Ms. Gately acknowledges that the "autopsy report" is public information. *See* Code Crim. Proc. art. 49.25. She contends, however, that "autopsy photographs" may be withheld from the public because, "since the photographs are taken for evidentiary purposes, they should fall under the law enforcement exception as being part of an ongoing investigation." By so stating, Ms. Gately seeks to invoke the protection of section 552.108 of the Government Code, which protects

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement . . . .

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). One of the purposes of the exception is to protect law-enforcement and crime-prevention efforts by preventing suspects and criminals from using records to evade detection and capture. *See* Open Records Decision Nos. 133 (1976), 127 (1976). Evidence that is gathered during the course of a pending criminal investigation is presumptively excepted from public disclosure by the law-enforcement exception. Attorney General Opinion MW-446 (1982). Ms. Gately informs this office that the autopsy was performed as the result of a "reopened . . . 16 year old suicide-turned-murder investigation."

This does not end our discussion, however, as to whether you may withhold the autopsy photographs under section 552.108. Section 11 of article 49.25 of the Code of Criminal Procedure provides:

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 full report and detailed findings of the autopsy, if any, shall be a part of the record.* Copies of *all records* shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. *Such records shall be public records.* [Emphasis added.]

Section 11 of article 49.25 specifically makes public all of the medical examiner's autopsy records that are forwarded to "the proper district, county, or criminal district attorney" for further investigation. Clearly, the photographs at issue here constitute such records. Information specifically made public by statute may not be withheld from the public by any of the Open Records Act's exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, we conclude that your office must release the autopsy photographs without delay.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,



KyMBERLY K. Oltrogge  
Assistant Attorney General  
Open Government Section

KKO/RWP/rho

Ref.: ID# 32630

Enclosures: Submitted documents

cc: Honorable Sandy S. Gately  
52nd Judicial District Attorney  
P.O. Box 919  
Gatesville, Texas 76528  
(w/o enclosures)

Mr. Tony Hartzel  
Reporter  
The Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)

Ms. Laura Vozzella  
Star-Telegram/Arlington  
P.O. Box 1088  
Arlington, Texas 76004  
(w/o enclosures)