



Office of the Attorney General  
State of Texas

September 29, 1998

DAN MORALES  
ATTORNEY GENERAL

Ms. Marva M. Gay  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR98-2338

Dear Ms. Gay:

You ask that we clarify the portion of Open Records Letter No. 98-1559 (1998) that concerns the required public release of post mortem photographs. We assigned your request for clarification ID# 118266.

Open Records Letter No. 98-1559 concerned a request to the Harris County Medical Examiner for a complete autopsy report to include "any and all supplements, reports, documents, and findings subsequent to the initial autopsy report." The decision determined that portions of the requested information are excepted from disclosure based on section 552.108 of the Government Code, but that the "photographs . . . taken during the actual post mortem examination . . . would be considered part of the complete autopsy report that is public under section 11" of article 49.25 of the Texas Code of Criminal Procedure.

You now argue that the photographs taken during the autopsy are not part of the "official autopsy report." You state that while the photographs are useful to the medical examiner preparing the autopsy report, the photos are not appended to the autopsy report. You say "[w]e are not aware of any organization of medical examiners, practice guideline or custom that recommends or condones sending post mortem photographs to people who merely request an 'autopsy report.' Customarily, when people want post mortem photographs[,] they tend to specifically request them in addition to the autopsy report. In fact it appears that many people who request an autopsy report would be horrified to receive post mortem photographs." You also contend that section 671.012 of the Health and Safety Code, which establishes a five dollar fee for a copy of an autopsy report furnished to a duly authorized person, does not contemplate the inclusion of post mortem photographs as part of an autopsy report.

A medical examiner must hold an inquest in certain death cases. Code Crim. Proc. art. 49.25 § 6. If the cause of death can be established beyond a reasonable doubt without an autopsy, the medical examiner must file a report "setting forth specifically the cause of death." *Id.* § 9. If the medical examiner is of the opinion that an autopsy is necessary, or if an autopsy is requested by the district attorney, an autopsy is performed to determine the

cause of death. *Id.* In cases in which a complete autopsy is deemed unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited autopsy to ascertain the cause of death or whether a crime has been committed. *Id.* A medical examination of an unidentified person must include certain information, including certain facial photographs. *Id.* § 9(b). Upon completion of the autopsy, the medical examiner must file a report setting forth the findings in detail with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county. *See id.* § 9(a).

Under section 11 of article 49.25, the medical examiner must keep full and complete records, including the autopsy report, if any:

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.

Under this provision, all of the medical examiner's records of an autopsy, including any post mortem photographs, are public. Thus, for purposes of determining whether post mortem photographs are subject to public release, we need not decide whether such photographs are part of an "official autopsy report." You do not argue that the post mortem photographs are not public information. However, the question of whether the county must release the photographs in response to a request for an autopsy report remains.

We find no provision in the Code of Criminal Procedure that specifically requires the inclusion of post mortem photographs in an autopsy report. You urge that article 49.25 of the Code of Criminal Procedure does not require their release in response to a request for an autopsy report. The construction placed on a statute by an agency charged with its administration is entitled to great weight. *Ex parte Roloff*, 510 S.W.2d 913 (Tex. 1974); *State v. Arkansas Dock and Channel Co.*, 365 W.W.2d 220 (Tex. Civ. App.--San Antonio 1963, writ ref'd). Courts will respect an agency's interpretation of a statute unless it is clearly erroneous. *See Shaw v. Strong*, 96 S.W.2d 276 (Tex. 1936). We do not believe it is clearly erroneous for Harris County to not include post mortem photographs in the information it releases in response to a request for a particular autopsy report. Thus, when presented with a request for an autopsy report, the Harris County Medical Examiner need not release the post mortem photographs, if any, to a requestor, unless the requestor specifically asks for copies of the photographs.<sup>1</sup>

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<sup>1</sup>A governmental body may ask the requestor to clarify a request. Gov't Code § 552.222(b).

If you have any questions about this clarification, please contact our office. With regard to future requests for a medical examiner's autopsy records, you need not request determinations from this office.

Yours very truly,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings  
Deputy Chief  
Open Records Division

KHH/mjc

Ref: ID# 118266

cc: Ms. Denise Bishop  
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(w/o enclosures)