



December 1, 1999

Mr. Charles J. Breaux, Jr.
Administrative Assistant to the Sheriff
Jefferson County Sheriff's Office
1001 Pearl Street
Beaumont, Texas 77701

OR99-3448

Dear Mr. Breaux:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129864.

The Jefferson County Sheriff's Department (the "department") received a request for the department's onsite investigation regarding the death of Mr. Bryan Harris. You claim that portions of the requested information are excepted from disclosure under section 552.130 of the Government Code and under section 552.101 of the Government Code in conjunction with federal and state statutory laws. We have considered the exceptions you claim and reviewed the submitted information.

We agree that the documents submitted to this office as Exhibits 1 through 3 contain driver's license numbers that are confidential. Section 552.130 excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must redact the driver's license numbers that appear in Exhibits 1 through 3.

Exhibits 1 through 3 also contain social security numbers that may be confidential under federal law as encompassed by section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes social security

numbers confidential if they are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Therefore, if the social security numbers contained in Exhibits 1 through 3 meet the criteria of section 405(c)(2)(C)(viii)(I), they are confidential under this provision as encompassed by section 552.101.

Exhibit 4 contains criminal history record information (“CHRI”). Criminal history record information generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, Exhibit 4 must be withheld.

Exhibit 5 contains an autopsy report. Generally, the release of autopsy reports prepared or maintained by a medical examiner are governed by Section 11 of article 49.25 of the Code of Criminal Procedure. *See* Act of May 22, 1999, 76th Leg., R.S., ch. 697, § 2, 1999 Tex. Sess. Law Serv. 3147 (Vernon). However, subchapter A of chapter 49 of the Code of Criminal Procedure governs the release of autopsy reports prepared in counties that do not have a medical examiner. *See* Crim. Proc. Code art. 49.02, 49.15. You state that Jefferson County has no medical examiner’s office. Moreover, the autopsy report in question indicates that it was not prepared by a medical examiner, but rather by a forensic pathologist under the direction and authority of a Jefferson County justice of the peace. Accordingly, we must determine whether the autopsy report at issue is confidential under subchapter A of chapter 49 of the Code of Criminal Procedure.

Article 49.15 of the Code of Criminal Procedure defines the duties of a justice of the peace with respect to creating and maintaining an inquest record. Article 49.15 provides in pertinent part:

(a) A justice of the peace or other person authorized under this subchapter to conduct an inquest shall make an inquest record for each inquest he conducts.¹ The inquest record must include a report of the events, proceedings, findings, and conclusions of the inquest. The record must also include any autopsy prepared in the case and all other papers of the case. All papers of the inquest record must be marked with the case number and be clearly indexed and be maintained in the office of the justice of the peace and be made available to the appropriate officials upon request.

(b) As part of the inquest record, the justice of the peace shall make and keep complete and permanent records of all inquest hearings.

...

(d) 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.

In addressing the question of whether article 49.15 makes the inquest record, including the autopsy report, confidential, we begin by noting the distinction between the inquest record and the inquest summary report. The inquest record must include: (1) a report of the events, proceedings, findings, and conclusions of the inquest, (2) any autopsy prepared in the case and all other papers of the case, and (3) and complete records of the inquest hearing, if a hearing was held. Crim. Proc. Code art. 49.15(a), (b). The inquest record is to be maintained in the office of the justice of the peace and be made available to the appropriate officials upon request. Crim. Proc. Code art. 49.15(a). On the other hand, the required contents of the inquest summary report are not enumerated. Article 49.15(d) directs the justice of the peace to certify a copy of the inquest summary report and deliver the certified copy to the clerk of the district court in a sealed envelope. Article 49.15(d) further states that the clerk of the district court shall retain the summary report subject to an order by the district court.

¹An "inquest" is "an investigation into the cause and circumstances of the death of a person, and a determination, made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission." Crim. Proc. Code art. 49.01(2).

We conclude that the language of article 49.15(d) makes the inquest summary report confidential and subject to inspection only by order of the district court. *Cf.* Open Records Decision No. 495 (1988) (concluding similar language in Texas Open Meetings Act makes certified agenda or tape recording of closed meeting confidential). However, this confidentiality does not extend to the inquest record which must “be made available to the appropriate officials upon request.” Crim. Proc. Code art. 49.15(a).

Now, we consider whether the part of article 49.15(a) which states the inquest record must “be made available to the appropriate officials upon request” means that the inquest record, including the autopsy report, is confidential and subject to inspection only by “appropriate officials.” The plain language of article 49.15(d) gives appropriate officials access to inquest records, but does not constitute an explicit grant of confidentiality with regard to all other persons. *Cf.* Open Records Decision No. 478 at 2-3 (1987) (finding that statute giving individual right of access did not constitute grant of confidentiality with regard to all other persons).

On the other hand, the legislature has with clear intent made records of justices of the peace open to public inspection. Gov’t Code § 27.004. Furthermore, in counties that have a medical examiner, the legislature has explicitly deemed autopsy reports maintained by the medical examiner pursuant to article 49.25 of the Code of Criminal Procedure open to public inspection.² Act of May 22, 1999, 76 Leg., R.S., ch. 607, § 2, 1999 Tex. Sess. Law Serv. 3147, 3148 (Vernon) (to be codified as an amendment to CODE CRIM. PROC. art. 49.25, §11); Open Records Decision Nos. 529 (1989), 521 at 7 (1989), 21 (1974). If we conclude that the language of article 49.15(a) makes inquest records, including autopsy reports, confidential, it would lead to the absurd result that autopsy reports maintained by justices of the peace pursuant to article 49.15 would be confidential and closed to public inspection, while autopsy reports maintained by medical examiners pursuant to article 49.25 are open to public inspection. When interpreting a statute, we must avoid a construction that leads to absurd consequences. *C&H Nationwide, Inc. v. Thompson*, 903 S.W.2d 315 (Tex. 1994); *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991). In order to avoid an absurd result, we conclude that article 49.15 does not make inquest records confidential. Thus, inquest records maintained under article 49.15, including autopsy reports, are open to public inspection pursuant to section 27.004 of the Government Code and the common-law right to inspect records of the judiciary. Accordingly, the department must release the autopsy file.

²However, in regard to counties that have a medical examiner, photographs and x-rays of a body taken during an autopsy are generally not subject to required public disclosure. *See* Act of May 22, 1999, 76 Leg., R.S., ch. 607, § 2, 1999 Tex. Sess. Law Serv. 3147, 3148 (Vernon) (to be codified as an amendment to CODE CRIM. PROC. art. 49.25, §11).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 129864

Encl: Submitted documents

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(w/o enclosures)