



March 5, 2001

Ms. Stephanie H. Harris  
Assistant City Attorney  
City of Paris  
P.O. Box 9037  
Paris, Texas 75461-9037

OR2001-0845

Dear Ms. Harris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144747.

The City of Paris (the "city") received a request for an offense report. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that you inform this office that the outgoing county attorney released the county's copy of the requested information to the requestor on two previous occasions. Pursuant to section 552.007 of the Government Code, a governmental body that voluntarily discloses nonconfidential information to a member of the public must release the same information to all members of the public who request the information. Because the county released the requested information, the *city* has not voluntarily disclosed the requested information to the public. Further, the city's release of the requested information to the county did not constitute a release to the public because information may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). Therefore, the prior release of the requested information by the county does not prohibit the city's assertion of exceptions to disclosure for the requested information.

Initially, we note that the submitted information contains an autopsy report. Generally, autopsy reports prepared or maintained by a medical examiner are required to be disclosed under Section 11 of article 49.25 of the Code of Criminal Procedure. However, the autopsy report in question was prepared by the Dallas County Medical Examiner at the request of the justice of the peace of precinct two of Lamar County. Subchapter A of chapter 49 of the Code of Criminal Procedure governs the release of autopsy reports prepared by a physician

under the direction and authority of a justice of the peace. *See* Crim. Proc. Code arts. 49.10(c)(1), 49.15(a). 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:

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) 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.

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, 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.<sup>1</sup> 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 city must release the autopsy report.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You have provided a letter from the chief of police indicating that the requested information relates to a pending criminal investigation and prosecution. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 177. Thus, with the exception of the basic front page offense and arrest information, you may withhold the

---

<sup>1</sup> However, photographs and x-rays of a body taken during an autopsy are generally not subject to required public disclosure. Code Crim. Proc. art. 49.25, §11.

submitted information, except for the autopsy report, from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.<sup>2</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

---

<sup>2</sup>Because you may withhold the submitted information under section 552.108, we need not address section 552.103. We note that generally basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 144747

Encl: Submitted documents

cc: Ms. Jeanna Allen Smith  
Route 2, Box 354A  
Paris, Texas 75462-9736  
(w/o enclosures)