



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 6, 2003

Ms. Thao La
Assistant District Attorney
Dallas County - Civil Section
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2003-1482

Dear Ms. La:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179712.

The Southwestern Institute of Forensic Sciences (the "institute"), which you represent, received a request for a copy of the medical examiner's file pertaining to a specific decedent. You state that you have released the complete autopsy report and related medical and investigatory documents. You claim, however, that the requested autopsy photographs and x-rays are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. We have considered the exception you claim and reviewed the submitted sample document.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

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 records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a

¹This letter ruling assumes that the submitted sample information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Based on your representation that neither exception applies in this instance, we agree that the autopsy photographs and x-rays are confidential and must be withheld from disclosure under section 552.101.

You also request that this office issue a previous determination allowing the institute to withhold autopsy photographs and x-rays under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that autopsy photographs and x-rays are confidential under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. *See Gov't Code § 552.301(a), (f); see also Open Records Decision No. 673 (2001)*. This previous determination applies only to the autopsy photographs and x-rays of individuals who did not die while in the custody of law enforcement. Furthermore, this previous determination only applies to requests for this type of information made under Chapter 552 of the Government Code. *See Open Records Decision No. 673 at 7 (2001)*. Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the institute need not ask for a decision from this office again with respect to this type of information requested of the institute under Chapter 552 of the Government Code. *See id.*

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

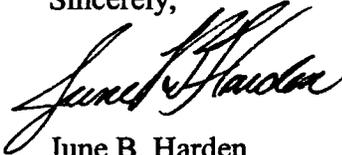
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dep't of Pub. 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 Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 179712

Enc: Submitted documents

c: Ms. Margaret Henning
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(w/o enclosures)