ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2004

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2004-1794

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199279.

The Harris County Medical Examiner (the "medical examiner") received a request for certain autopsy photographs. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the requestor's submissions.

Section 552.101 of the Government Code excepts from required public disclosure information made confidential by law, including information made confidential by statute. 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 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. Pursuant to section 11, the autopsy photographs are confidential. You state that no subpoena has been served for the photographs and no other law provides for the release of the photographs. Furthermore, you claim that the death in this case did not occur while the decedent was in the custody of law enforcement. You state that "it appears that the deceased had escaped from the back of a patrol vehicle and was killed by a motor vehicle when running away." However, the requestor maintains that the death occurred while the decedent was in custody of law enforcement. This office cannot resolve in the open records process the legal and factual question of whether the decedent in this case died while in the custody of law enforcement. *Cf.* Open Records Decision Nos. 554 (1990), 552 (1990). Accordingly, we find that if the decedent was not in the custody of law enforcement at the time of his death, the medical examiner must withhold the photographs of the body taken during the autopsy based on section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. On the other hand, you raise no other exception to disclosure. Accordingly, if the decedent died while in the custody of law enforcement, we find that the medical examiner must release to the requestor the photographs of the body taken during the autopsy.

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

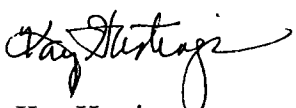
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 199279

Enc: Submitted photographs

c: Ms. Edna Ballard
c/o Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700
(w/o enclosures)