



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2006

Ms. Thao La  
Assistant District Attorney  
Administration Building  
411 Elm Street, 5<sup>th</sup> Floor  
Dallas, Texas 75202

OR2006-04533

Dear Ms. La:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 252304.

The Dallas County District Attorney (the "district attorney") received a request for "better images or the digital format" of autopsy photographs of an individual that have already been released to the requestor as representative of the individual's family. You claim that the requested information is excepted from disclosure pursuant to section 11 of article 19.25 of the Texas Code of Criminal Procedure. We have considered your argument and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us that the Dallas County Medical Examiner's Office has released the submitted autopsy photographs to the requestor pursuant to a subpoena. *See* Crim. Proc. Code § 11(a), art. 49.25 (photograph of body taken during autopsy is subject to disclosure under subpoena or authority of other law). You also state that "[t]he quality of the autopsy photographs that were released is the same quality of autopsy photographs that the medical examiner uses for all business purposes." The Act does not require a governmental body to

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. See Open Records Decision No. 561 at 8-9 (1990). In addition, section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. See Gov't Code § 552.228(b)(1), (2). Accordingly, to the extent that the district attorney has better images of the autopsy photographs or the photographs in digital format, you must release that information to the requestor. See Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000). However, the district attorney is not required to create new information in responding to this request. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

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).

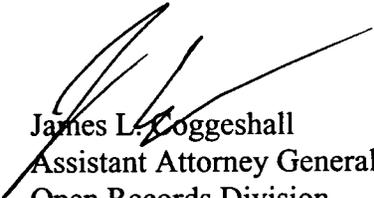
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 252304

Enc. Submitted documents

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(w/o enclosures)