



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2006

Ms. Thao La
Assistant District Attorney
Civil Division Admin Building
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2006-07572

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# 253577.

The Dallas County Medical Examiner's Office, also known as the Southwestern Institute of Forensic Science at Dallas ("SWIFS") received a request for "all reports, documents, and correspondence related to the autopsy" of a named individual, with the exception of social security numbers. You inform us that the requestor subsequently modified his request to exclude "the medical records relating to the decedent in SWIFS' file."¹ You state that you are releasing most of the requested information to the requestor, but claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Accordingly, the information we have marked is not responsive to the request as this information consists of medical records relating to the deceased. This ruling does not address the public availability of any information that is not responsive to the request, and SWIFS is not required to release such information in response to the request for information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd).

You assert that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code based on the privacy rights of the family of the deceased individual. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Gov't Code § 552.101. We first note that the right of privacy is a personal right that lapses at death. Thus, information may not be withheld on the basis of the privacy interests of a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). *But see* Attorney General Opinion JM-229 (1984) (if release of information about deceased person reveals highly intimate or embarrassing information about living persons, that information must be withheld under common-law privacy). However, the United States Supreme Court recently recognized that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004).

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

In this instance, since the submitted information relates to a deceased individual, it may not be withheld from disclosure based on the privacy interests of the deceased individual. We have received a letter from one of the deceased individual's family members that requests that the submitted information be withheld. After reviewing your comments, the surviving family member's comments, and the submitted information, we find that the family's privacy interest in the submitted photograph outweighs the public's interest in the disclosure of this information. Thus, SWIFS must withhold the photograph we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked additional information that must also be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that release of the remaining submitted information would not implicate the surviving family members' privacy rights, and there is a legitimate public interest in the information. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute

his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow). Therefore, the remaining submitted information may not be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Section 552.117 only applies to records that the governmental body is holding in an employment capacity. The submitted documents are medical examiner's records maintained by SWIFS, not employment records, and thus, you may not withhold any submitted information under section 552.117. SWIFS must release the information that it marked as excepted under section 552.117 of the Government Code.

In summary, SWIFS must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy. The remaining responsive information must be released to the requestor.

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. 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 253577

Enc. Submitted documents

c: Mr. Jack Douglas, Jr.
Fort Worth Star-Telegram
400 West Seventh Street
Fort Worth, Texas 76101
(w/o enclosures)