



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center, 9th Floor
El Paso, Texas 79901

OR2009-11362

Dear Ms. Sandoval-Walker:

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# 352193.

The El Paso Police Department (the "department") received a request for all digital photographs pertaining to a specified police report as well as the autopsy photographs of a named individual. You state that you have released the photographs pertaining to the specified police report to the requestor. You claim the submitted autopsy photographs are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information is not responsive to the instant request for information. The requestor only seeks all digital photographs pertaining to a specified police report as well as the autopsy photographs of the named individual. In addition to requested photographs, you have also submitted to this office the written incident report, which was not requested. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

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 the following:

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. Because neither exception to confidentiality applies to the information in this instance, we agree that the department must withhold the submitted autopsy photographs pursuant to section 11 of article 49.25 of the Code of Criminal Procedure. We note, however, that some of the submitted photographs are not autopsy photographs, but rather photographs taken of the accident scene. The photographs taken at the scene are not autopsy photographs, and thus, article 49.25 is not applicable to these photographs. As you raise no further exceptions to disclosure of these photographs, which we have marked, they must be released to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 352193

Enc. Submitted documents

c: Requestor
(w/o enclosures)