



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2011

Ms. Janet I. Monteros  
Assistant County Attorney  
El Paso County  
500 East San Antonio  
El Paso, Texas 79901

OR2011-13503

Dear Ms. Monteros:

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# 430252 (CA-OP-11-278 and CA-OP-11-287).

The El Paso Medical Examiner’s Office (the “medical examiner”) received a request for the autopsy reports and photographs pertaining to two named individuals. You state the medical examiner has released some of the responsive information. You claim that the submitted 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 560.003 of the Government Code, which provides “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, a person, or the person’s authorized representative, has a right of access under section 560.002(1)(A) to that person’s biometric information. The submitted information

contains the fingerprints of one of the deceased individuals. We note the requestor represents two clients, one of whom is the mother of the individual whose fingerprints are at issue. We are unable to determine whether the requestor's client who is the mother of this deceased individual is the authorized representative of the deceased. Accordingly, we must rule conditionally. If the deceased individual's mother is his authorized representative, then she has a right of access to his fingerprints under section 560.002(1)(A) and the submitted fingerprints must be released to her. However, if the deceased individual's mother is not his authorized representative, then the medical examiner must withhold his fingerprints from her, as well as from the other client, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which 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 [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], 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.

Crim. Proc. Code art. 49.25, § 11. You state the remaining submitted information consists of autopsy photographs. Upon review, we agree the remaining information consists of photographs of bodies taken during autopsies. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the medical examiner must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

In summary, if the requestor's client who is the mother of the deceased is the deceased's authorized representative, then the medical examiner must release the submitted fingerprints to her pursuant to section 560.002 of the Government Code. If this client is not the deceased's authorized representative, then the medical examiner must withhold the submitted fingerprints from her, as well as from the other client, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The medical examiner must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

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](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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/em

Ref: ID# 430252

Enc. Submitted documents

c: Requestor  
(w/o enclosures)