



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

Lieutenant William Ryan
Record Division
Pharr Police Department
1900 South Cage
Pharr, Texas 78577

OR2013-17975

Dear Lieutenant Ryan:

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# 502710.

The Pharr Police Department (the "department") received a request for the incident report related to case number 13-5242. You state the department has released some responsive information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted records include photographs of a body taken during an autopsy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 do not inform us that either of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the autopsy photographs are confidential under section 11 of article 49.25 of the Code of Criminal Procedure, and the department must withhold the photographs under section 552.101 of the Government Code.

Next, we note the remaining information is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-09850 (2013). In that decision, we ruled that the department must release basic information and may withhold the remaining information under section 552.108(a)(1) of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the department must continue to rely on Open Records Letter No. 2013-09850 as a previous determination and continue to withhold or release any previously ruled upon information in accordance with that prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In summary, the department must withhold the autopsy photographs under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The department must continue to rely on Open Records Letter No. 2013-09850 as a previous determination and continue to withhold or release any previously ruled upon information in accordance with that prior ruling.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 502710

Enc. Submitted documents

c: Requestor
(w/o enclosures)