



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 23, 2013

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
916 Main Street, Suite 1101
Lubbock, Texas 79401

OR2013-22357

Dear Ms. Clarke:

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# 511615.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for specified autopsy photographs. You state the medical examiner's office will release some of the responsive information. You claim most of the submitted 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 must address the medical examiner's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The medical examiner's office received the request for information on October 10, 2013. Accordingly, you were required to provide the information required by subsection 552.301(b) by October 24, 2013. However, the envelope in which the medical examiner's office provided the information required by subsection 552.301(b) bears a postmark of October 31, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United

States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the medical examiner's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. As section 552.101 can provide a compelling reason to overcome this presumption, we will address your argument under section 552.101 for 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. This section encompasses information protected by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner's office 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.

Crim. Proc. Code art. 49.25, § 11. You state the submitted information includes photographs of the deceased taken during an autopsy. You also state neither of the statutory exceptions to confidentiality is applicable in this instance. We agree that the medical examiner's office must withhold the photographs depicting the body of the deceased under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. You state the medical examiner's office will release the photographs that are not of the body 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.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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 511615

Enc. Submitted documents

c: Requestor
(w/o enclosures)