



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 13, 2016

Ms. Donna L. Clarke  
Assistant Criminal District Attorney  
Civil Division  
Lubbock County Medical Examiner's Office  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2016-00998

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# 594140.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for all photographs, drawings, lab results, documents, and other evidence pertaining to a specified death certificate. You state you have released some information. You claim 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.<sup>1</sup>

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 encompasses information protected by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides:

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<sup>1</sup>We note the medical examiner's office did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b). Nevertheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider your argument for the submitted information. See *id.* §§ 552.007, .302, .352.

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 may not be withheld, subject to a discretionary exception under 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(a). Some of the submitted information consists of photographs taken during an autopsy. You state, and we agree, neither of the statutory exceptions to confidentiality are applicable in this instance. Accordingly, the medical examiner's office must withhold the submitted autopsy photographs depicting a body under section 552.101 in conjunction with section 11 of article 49.25. However, the medical examiner's office may not withhold the remaining photographs, which do not consist of photographs of a body, under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the medical examiner's office must withhold the information we have marked under section 552.101 on the basis of common-law privacy. However, we find you have failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the medical examiner's officer may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the medical examiner's office must withhold the submitted autopsy photographs depicting a body under section 552.101 of the Government Code in conjunction

with section 11 of article 49.25 of the Code of Criminal Procedure. The medical examiner's office must withhold the information we have marked under section 552.101 of the Government Code on the basis of common-law privacy. The remaining information must be released.

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](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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive, flowing style.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 594140

Enc. Submitted documents

c: Requestor  
(w/o enclosures)