



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2016

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P. O. Box 10536
Lubbock, Texas 79408-3536

OR2016-08237

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# 605440.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to a deceased individual. The medical examiner's office states it has released some of the requested information.¹ The medical examiner's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.²

¹The medical examiner's office informs us it contacted the surviving spouse of the deceased individual at issue, who stated she does not object to the release of the requested information to this requestor. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157(2004).

²We note the medical examiner's office did not comply with the requirements of section 552.301 of the Government Code. *See Gov't Code* § 552.301(b). Nevertheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the claim of the

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 section 11(a) 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 may not be withheld, subject to a discretionary exception under [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(a). The submitted information contains photographs and an x-ray of a body taken in connection with an autopsy, which we have indicated. There is no indication the exceptions to confidentiality provided in section 11 of article 49.25 are applicable. Accordingly, the medical examiner’s office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 11(a) of article 49.25 of the Code of Criminal Procedure. However, the remaining photographs are not photographs or x-rays of a body, or they are photographs of a body taken at a crime scene. Thus, the remaining information is not confidential under section 11(a) of article 49.25, and the medical examiner’s office may not withhold it under section 552.101 on that ground. As no further exceptions to disclosure have been raised, the medical examiner’s office must release the remaining information.

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

medical examiner’s office under that section.

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 "Michael A. Pearle". The signature is written in a cursive style with a large, stylized initial "M".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 605440

Enc. Submitted documents

c: Requestor
(w/o enclosures)