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September 19, 2025

Honorable Ken Paxton, Attorney General
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
Via Email: opinion.committee@oag.texas.gov

Dear General Paxton,

I write to request an opinion regarding House Bill 4490 passed during the 89th regular legislative session which amended Article 49.25, Section 11 of the Code of Criminal Procedure and made certain next of kin information of deceased individuals confidential. Attached is a brief prepared by the Chief of the Civil Division, Larry Roberson, to assist your office in the review of this very important matter.

I would respectfully request that the opinion be completed and released as expeditiously as possible due to the pressing public health concerns at issue.

Thank you for your opinion on this matter,

Joe D. Gonzales,
Criminal District Attorney
Bexar County, Texas



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RE: Request for Attorney General Opinion Regarding House Bill 4490 and the Confidentiality of Next of Kin Information

Dear General Paxton:

This is to request that the Attorney General of Texas issue an Attorney General opinion pursuant to Sections 402.042-.043 of the Texas Government Code.

Introduction

The county medical examiner's office plays a critical role in locating next of kin to ensure proper communication regarding autopsy processes, the release of remains for burial, and to assist with providing medical history information in death investigations. House Bill 4490 was enacted to protect the privacy of families from unwanted solicitation and intrusive outreach during the difficult period following the loss of a loved one. According to the Public Health Committee Report, one of the primary concerns of the Public Health Committee is protecting the privacy of grieving families and ensuring their continued cooperation with medical examiners. As noted in the bill analysis:

“Families who are aware of [public release of next of kin information] are deterred from cooperating with the medical examiner's office, ultimately hampering investigations and delaying processes. H.B. 4490 seeks to protect families' privacy and ensure that information may still be disclosed for legitimate purposes, such as law enforcement, by establishing that the disclosure of information relating to the next of kin of a decedent is excepted from state public information law...”

See Exhibit “A” – Public Health Committee Report.

By protecting the privacy of families who have lost a loved one, House Bill 4490 aims to encourage families to continue to communicate and cooperate with a medical examiner’s office. As Representative John Smithee noted during legislative debate, the bill aims to shield grieving next of kin from harassment from those who might use public records to contact bereaved families and protects those families’ privacy during their time of grief. However, the language of the final bill, as passed by the Texas legislature, is broadly written in a manner that creates uncertainty as to a medical examiner’s authority to release next of kin information under the Texas Public Information Act. Importantly, improper disclosure of confidential information constitutes a criminal offense, not to be brushed aside.

According to the San Antonio Express News Editorial Board, “common sense” and “critical thinking skills” would lead to the conclusion that tissue and corneal donation organizations are authorized to obtain next of kin information from the Bexar County Medical Examiner’s Office under H.B. 4490.¹ See Exhibit “B.” However, this reasoning is unsupported and untethered to the statutory text. It ignores the statute’s lack of explicit guidance and runs counter to well-established legal principles of statutory interpretation.² It is a foundational principle that there is no such thing as exception by implication. If the Legislature did not place it in the legislation, an exception to the law does not exist. See *Spears v. City of San Antonio*, 223 S.W. 166, 169 (Tex. 1920) (“It is surely the settled law that exceptions will not be ingrafted on statutes by implication or merely because good reasons might be found for adding them.”). In practice, it strains credulity to suggest that “common sense” analysis could supplant legal analysis and distinguish between entities the Legislature intended to restrict and those it did not.

To effectuate its stated purpose, the Legislature adopted the version of H.B. 4490 which amended Article 49.25 of the Code of Criminal Procedure to except “information relating to the next of kin of a decedent” from mandatory disclosure under the Public Information Act, thereby rendering such information confidential. Bexar County and the Bexar County’s Medical Examiner’s Office have adopted a cautious approach, interpreting the statute to permit only those exceptions expressly provided, even with respect to long-standing contractual arrangements with tissue and corneal donation organizations. Because the statute does not expressly address this scenario and given that improper disclosure could expose County officials and staff to potential criminal penalties, clarification from the Office of the Attorney General is necessary.

1 Express-News Editorial Board, Opinion Staff, *Bexar County misinterpretation of new law jeopardizes tissue, corneal donations: Bexar County officials ought to employ more critical thought than they’re displaying in this matter*, San Antonio Express-News, Sep. 10, 2025, available at <https://www.expressnews.com/opinion/editorial/article/bexar-county-eye-donors-21039656.php> (“...in some ways, it’s more infuriating when a reasonably well-intentioned law causes harm because public officials misinterpret it — and are too obstinate to admit they are wrong.”).

2 One takes a significant risk by trading jurisprudence for journalism, the inevitable by-product of misapplying the media’s asserted “common sense” test is serious legal consequence: improper release of confidential information under the Public Information Act “is a misdemeanor punishable by a fine of not more than \$1,000 or confinement in the county jail for not more than six months or both fine and jail.” See Tex. Gov’t Code 552.352(b).

Accordingly, this request seeks guidance on whether, and under what circumstances, medical examiners may provide next of kin information to tissue and corneal donation organizations in a manner consistent with the confidentiality requirements codified in Article 49.25, as amended by H.B. 4490.

QUESTIONS PRESENTED

Given this context, and to ensure compliance with the language of H.B. 4490, we respectfully request an Attorney General opinion addressing the following questions:

1. Whether H.B. 4490, which amended Article 49.25, Section 11(d) of the Texas Code of Criminal Procedure to except “information relating to the next of kin of a decedent” from mandatory disclosure prohibits a county medical examiner from disclosing next of kin information to tissue and corneal donation organizations for the purpose of facilitating donation?
2. Whether a pre-existing no-fee contractual agreement between a county and a nonprofit tissue and corneal donation organizations in which the entity is not a bona fide service provider but instead facilitates the harvesting of tissue and provides related facility access constitutes “other law” that authorizes the disclosure of next of kin information under Article 49.25, Section 11(d) of the Texas Code of Criminal Procedure?
3. Whether other Texas statutes, including those governing organ and tissue donation and the Donate Life Texas Registry, authorize or requires a county medical examiner to disclose next of kin information notwithstanding the confidentiality requirements established by H.B. 4490 given that such laws neither expressly exempt next of kin information nor reference the handling of that information?
4. Whether a county medical examiner who relies on established state donation laws which do not reference the release of next of kin information or contractual agreements with donation agencies may disclose next of kin information restricted by H.B. 4490 to tissue and corneal donation organizations without violating the criminal penalties imposed by the Texas Public Information Act?
5. Whether information that indirectly identifies or could be used to contact a decedent’s next of kin, such as a shared home address, a decedent’s home telephone number, or other similar contact information, constitutes “information relating to the next of kin of a decedent” under Article 49.25, Section 11(d), and is therefore subject to the confidentiality protections established by H.B. 4490?

BACKGROUND

For decades, the Bexar County Medical Examiner’s Office has played a critical role in supporting tissue and corneal donation through its established partnerships with the South Texas Blood & Tissue Center and the San Antonio Corneal Bank. These longstanding collaborations have advanced the lifesaving missions of both organizations, with tissue

from a single donor benefiting as many as seventy-five patients and corneal donations restoring sight to hundreds of individuals each year. The Bexar County Medical Examiner's Office has consistently recognized the extraordinary public health value of these efforts and has actively supported them by ensuring that donation opportunities are identified and coordinated promptly and fully within the bounds of the law.

In May 2025, the 89th Texas Legislature enacted House Bill 4490, amending Article 49.25 of the Code of Criminal Procedure to provide:

“Information relating to the next of kin of a decedent is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure under subpoena or authority of other law.”

With no objection on record, Governor Abbott signed the measure into law on June 20, 2025, with immediate effect. The Legislature's stated purpose was clear: to protect the privacy of grieving families from harassment and intrusive contact by commercial actors seeking to exploit public records, particularly attorneys and funeral service marketers, but the statute is not expressly limited to those types of vendors.

Since the effective date, Bexar County has applied H.B. 4490 according to its plain and unambiguous text, consistent with well-established principles of statutory construction. The statute, as enacted, contains no exception for tissue and corneal donation organizations, rendering next of kin information categorically confidential and permitting disclosure only under subpoena or authority of “other law.” Accordingly, this office has advised the Medical Examiner's Office to release only decedent information and withhold next of kin information, absent further legislative action or clarification from the Attorney General. As a result, tissue and corneal donation organizations have reported a decline in timely donation opportunities. The County recognizes the indirect impact this has on the information-gathering process for those entities working with patients awaiting donations, as well as on families seeking to honor their loved one's wishes through donations.

Local media outlets have used undue criticism to pressure the Bexar County Medical Examiner's office to release next of kin information without regard for the new law.³ Editorial boards and commentators have argued that “common sense” and “critical thought” permit a county to read H.B. 4490 as if it contained exceptions that the Legislature itself chose not to include. *See* Exhibit “B”. Yet under longstanding Texas law, counties, like courts, are not at liberty to create “exceptions by implication.” *Spears*, 223 S.W. at 169. As creatures of statute, counties may exercise only the powers the law authorizes. This principle, often referred to as Dillon's Rule, limits counties to powers expressly granted by statute, those necessarily implied, and those that are essential to accomplishing their declared objects. No matter how compelling policy arguments may be, matters of legislative design remain the exclusive prerogative of that body.

³ Early reporting was thorough and balanced, evidencing a good-faith review of the issues from multiple vantage points. *See* Nancy Pryor-Johnson, *Tissue donations can save lives, ease suffering. A new Texas law is getting in the way*, San Antonio Express-News, Sep. 2, 2025, available at <https://www.expressnews.com/news/article/texas-law-gets-in-way-of-tissue-eye-donations-21016449.php>

The criticism by local media is misguided and unwarranted. For decades, the Bexar County Medical Examiner's Office has collaborated closely with tissue and corneal donation organizations to advance their lifesaving missions. That cooperation continued without controversy until the enactment of H.B. 4490, which rendered the next of kin information confidential by law. This change does not reflect any change in the County's commitment to supporting donation but rather underscores the clear legal limits imposed on the disclosure of next of kin information.

Bexar County does not question the profound societal value of organ and tissue donation, nor the selflessness of families who choose to give at a time of significant loss and personal grief. This office fully supports the mission of donation organizations, recognizes their indispensable contributions to public health, and affirms that their work transforms tragedy into healing for countless individuals. At the same time, the County acknowledges that the Legislature has made a policy determination that families deserve privacy and dignity immediately following a loved one's death, a protection codified in H.B. 4490.

The present conflict arises not from any lack or merit on the part of donation organizations, nor from any doubts as to their importance, but from the fact the Legislature did not provide an explicit statutory pathway for them to continue receiving next of kin information.⁴ Counties, bound by law and subject to criminal penalties for improper disclosure under the Public Information Act, cannot create exceptions where none exist. Following the enactment of H.B. 4490, the authority to release next of kin information, once exercised by the Medical Examiner's Office, is now determined by the Legislature, which alone has the authority to recalibrate the balance between family privacy and life-saving donations.

Accordingly, Bexar County respectfully seeks the guidance of the Attorney General. An authoritative interpretation is necessary to reconcile the confidentiality requirements of H.B. 4490 with Texas's longstanding public policy favoring organ and tissue donation. Until such clarity is provided, counties must err on the side of nondisclosure to ensure compliance with the Legislature's clear command.

ARGUMENT AND AUTHORITIES

The Texas Supreme Court has emphasized that courts must assume that the Legislature has done its very best to express its intent in the actual words of the statute itself. *Tex. Health Presbyterian Hosp. of Denton v. D.A.*, 569 S.W.3d 126, 136 (Tex. 2018). In drafting a statute, the Legislature attempts to express its intent clearly, and therefore the words it chooses should be the surest guide to that legislative intent. *See Fitzgerald v. Advanced Spine Fixation Systems, Inc.*, 996 S.W.2d 864, 866 (Tex. 1999). Statutes must be enforced as written and the text chosen by lawmakers should not be rewritten. *See Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 562 (Tex. 2014) (citing *Entergy Gulf States, Inc. v.*

⁴ See Exhibit "C." The final bill analysis by the Senate Research Center indicates that: "H.B. 4490 seeks to alleviate these privacy concerns by exempting next of kin information from public disclosure under the Public Information Act... H.B. 4490 amends current law relating to an exemption from required disclosure of information related to the next of kin of deceased persons."

Summers, 282 S.W.3d 433, 443 (Tex.2009)). Importantly, “ordinary citizens should be able to rely on the plain language of a statute to mean what it says.” *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999).

Statutory interpretation should not be based on legislative history or other extrinsic aides where a statute is unambiguous because the statute’s plain language most reliably reveals the legislature’s intent. *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 571 (Tex. 2014). Only if the statutory text is susceptible to more than one reasonable interpretation is it appropriate to look beyond its language for assistance in determining legislative intent. *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012). Even if the Legislature makes a mistake, “courts are not empowered to ‘fix’ that mistake by disregarding the direct and clear statutory language that does not create an absurdity.” *Comet II Constr., Inc.*, 438 S.W.3d at 571 (citing *Tex. Lottery Comm’n v. First State Bank of DeQueen*, 325 S.W.3d 628, 638 (Tex. 2010)). “Courts are not responsible for omissions in legislation, but [they] are responsible for a true and fair interpretation of the law as it is written.” *Id.* (citing *Tex. Lottery Comm’n*, 325 S.W.3d at 637).

Unambiguous statutes are read as they are written, not according to what may seem sensible from a policy perspective, unless that interpretation produces an absurd result. *Combs v. Health Care Serv. Corp.*, 401 S.W.3d 623, 630 (Tex. 2013). Mere disagreement with a policy decision does not equate to an absurd result. *Getts v. State*, 155 S.W.3d 153, 158 (Tex. Crim. App. 2005) (quoting *Lamie v. United States Trustee*, 540 U.S. 526, 542, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004)) (“It is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think ... is the preferred result.”). Courts should not “construe [a] statute in a manner that substitutes what [they] believe is right or fair for what the [L]egislature has written.” *Ex parte Kibler*, 664 S.W.3d 220, 233 (Tex. Crim. App. 2022). The “absurdity safety valve is reserved for truly exceptional cases, and mere oddity does not equal absurdity.” *Combs*, 401 S.W.3d at 630.

Interpretive analysis should be confined to the statutory text, applying the plain meaning of the words “unless a different meaning is apparent from the context, or the plain meaning leads to absurd or nonsensical results.” *Id.* (citing *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex.2011)); *see also* Tex. Gov’t Code § 311.011(a) (“Words shall be read in context and construed according to the rules of grammar and common usage.”). Statutes must be considered as a whole rather than in isolation. *Id.* (citing *TGS–NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011)). Ultimately, statutes should be read contextually giving effect to every word, clause, and sentence. *See In re Office of Att’y Gen.*, 422 S.W.3d 623, 629 (Tex. 2013).

When a statute’s language is unambiguous, it is inappropriate to resort to rules of construction or extrinsic aids. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 626 (Tex. 2008). The goal of statutory interpretation “is not to second-guess the policy choices that inform our statutes or to weigh the effectiveness of their results; rather, our task is to interpret those statutes in a manner that effectuates the Legislature’s intent.” *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 690 (Tex. 2007) (quoting *McIntyre v.*

Ramirez, 109 S.W.3d 741, 748 (Tex. 2003)).

House Bill 4490 amended Article 49.25, Section 11 of the Code of Criminal Procedure to provide:

“Information relating to the next of kin of a decedent is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure under subpoena or authority of other law.”

The statutory command is unambiguous and clear: next of kin information is private and confidential, and the only exceptions are disclosure pursuant to subpoena or authority of “other law.” Texas law requires that confidentiality provisions must be applied as written.⁵ The Texas Supreme Court has consistently held that courts may not engraft by implication exceptions not placed there by the Legislature. *Spears*, 223 S.W. at 169. Similarly, the Attorney General’s Open Records Division has emphasized that exceptions to confidentiality must be “express and specific.” *See, e.g.*, Tex. Att’y Gen. ORD-658 (1998); Tex. Att’y Gen. OR2018-03394. Accordingly, unless another statute or rule qualifies as “other law,” County officials may not release next of kin information without violating Section 552.352 of the Government Code, which imposes criminal liability for knowingly disclosing confidential information. H.B. 4490 expressly provides a single, narrow exception: disclosure only under “subpoena or other law.” The Legislature specifically chose not to list additional exceptions, including tissue banks or other donation organizations. While some may argue that this may not make sound policy sense, that policy decision is the sole prerogative of the Legislature. *See Health Care Serv. Corp.*, 401 S.W.3d at 630.

It has been suggested that the phrase “other law” encompasses provisions within the Uniform Anatomical Gift Act, Tex. Health & Safety Code Chapters 629A and 693. These statutes, however, are limited to permitting medical examiners to authorize corneal removals. Neither referenced statute addresses release of next of kin information. Tissue and corneal donation organizations have nonetheless argued that these statutes implicitly authorize such disclosures even though they do not specifically reference next of kin information.

Mr. Frank Burney, legal counsel for BioBridge Global, drafted a memorandum in support of his position explaining to this office why H.B. 4490 should not apply to tissue and corneal donation organizations. *See Exhibit “D.”* In his memorandum, Mr. Burney cited the following provision of the Texas Code of Criminal Procedure as “other law” excepting next of kin information to any donor agency:

⁵ Apparently, the 89th Legislature was also concerned that its specific and unambiguous words were being misinterpreted or misconstrued. *See* H.B. 3393, § 2, 89th Leg., R.S. (2025) (proposed Tex. Gov’t Code § 311.0212). Had H.B. 3393 passed, proposed Section 311.0212 would have limited courts from considering, consulting, citing, relying on, or giving weight to *any* statement from individual legislators, committee reports, or statements from presiding officers or the governor made upon signing a bill. Additionally, the Texas Supreme has also cautioned that: [i]f the text is unambiguous, we must take the Legislature at its word and not rummage around in legislative minutiae. *Alex Sheshunoff Mgmt. Servs. v. Johnson*, 209 S.W.3d 644, 652 n. 4 (Tex.2006).

“The medical examiner may release a copy of an autopsy report of a deceased person to any organ and tissue procurement organization, hospital, or other covered entity as defined by Section 181.001, Health and Safety Code, that treated the deceased person before death or procured any anatomical gift from the body of the deceased person. The release of a report under this subsection is not considered a disclosure under Chapter 552, Government Code. A report obtained under this subsection is confidential and not subject to disclosure under Chapter 552, Government Code. Tex. Code Crim. Proc. Ann. art. 49.25, §11 (c).”

Mr. Burney is correct that organ and tissue organizations have a special right of access to autopsy reports. However, in Bexar County, next of kin information is not contained in autopsy reports. Mr. Burney was notified that while his client may obtain the autopsy reports under the asserted exception, those reports do not contain the next of kin information his client seeks and therefore cannot serve as a conduit for the “other law” exception he asserted.

Even where a statute grants a donor agency a special right of access to certain records, any specific information contained in those records that is deemed confidential under another statute, such as H.B. 4490, must still be withheld. Access to autopsy reports or other decedent records does not create a general right to obtain confidential next of kin information unless the Legislature has explicitly authorized it. In other words, while tissue and corneal donation organizations may receive autopsy reports under Section 11(c) of Article 49.25, if next of kin information were contained in those autopsy reports, that information must be redacted or withheld.

The absence of an express exception means that county officials remain legally obligated to protect next of kin information, even when other limited access rights exist. This approach is consistent with the release of how other confidential information is handled, e.g., social security numbers contained in documents released under the Public Information Act must be redacted under the law. Had the Legislature intended to grant donor organizations a similar special right to access next of kin information under H.B. 4490, it could have done so explicitly. After-the-fact arguments based on policy considerations do not alter or override a clear, unambiguous statutory directive.

Mr. Burney next cited to Section 692A.010 of the Texas Health and Safety Code as an exception to H.B. 4490’s broad reach:

“However, if an individual listed in "Section 692A.009 cannot be identified and contacted within four hours after death is pronounced ... *the county court may permit the removal of a nonvisceral organ or tissue.*" See TEX. HEALTH & SAFETY CODE ANN. §693.003 (emphasis added).”

Section 693.003 specifically grants authority to the county court, not the Medical Examiner, to permit the removal of a nonvisceral organ and does not address the release of information. See Tex. Health and Safety Code Ann. § 693.003. This statute does not pertain to the release of next of kin information by a medical examiner. While section 693.002(b) governs consent for tissue removal, it does not independently authorize disclosure of next

of kin information, nor does it permit such disclosure in the absence of a court order. Mr. Burney concluded:

“The interpretation of law adopted by the Bexar County District Attorney's Office ignores the phrase, "but is subject to disclosure under subpoena or other authority of law," and by doing so ignores the language in the Bill, which is intended to permit other laws expressly to the contrary to supersede and control over the effect of the Bill. The language provides a "carve-out" for organizations like BBG to contact next of kin.”

On the contrary, the Bexar County District Attorney's Office focused on the “other law” language of the statute to ascertain whether an exception exists in this instance. This office has been unable to locate any statute that excepts or authorizes the release of next of kin information to tissue donation agencies. And neither legal counsel for tissue donation agencies nor any other entity has identified a statute that excepts or authorizes the release of next of kin information that satisfies the “other law” exception contained in H.B. 4490.

Although some may be inclined to overlook material distinctions or interpret statutory provisions in an overly simplified manner to achieve a policy goal, counties are obligated to follow the express directives of the law as drafted. In the absence of a statute explicitly authorizing the release of next of kin information, such provisions do not override H.B. 4490's explicit confidentiality requirements. Criminal liability under these provisions rests solely with the county officials who improperly release the information, not with those requesting it. Non-compliance could therefore expose officials to serious criminal liability.

Under Section 552.352 of the Texas Public Information Act, a person commits an offense for distributing information considered confidential under that chapter:

“An officer or employee of a governmental body...commits an offense if the officer or employee knowingly...uses the confidential information for a purpose other than the purpose for which the information was received or....permits inspection of confidential information by a person who is not authorized to inspect the information; or discloses the confidential information to a person who is not authorized to receive the information.”

See Tex. Gov't Code 552.352(a-1). An offense is a misdemeanor punishable by a fine of not more than \$1,000; confinement in the county jail for not more than six months; or both the fine and confinement. *See* Tex. Gov't Code 552.352(b). In addition, a violation also constitutes official misconduct. *See* Tex. Gov't Code 552.352(c).

H.B. 4490 was enacted in part to protect the privacy of grieving families in response to concerns that families would no longer cooperate with medical examiners offices if they believed their privacy was at risk. The language of H.B. 4490 is clear and unambiguous, leaving no need to rely on extrinsic aids to determine legislative intent. Just as some families may welcome contact from an attorney or funeral home, others would undoubtedly find such outreach intrusive. Similarly, while some families may welcome communication

from tissue and corneal donation organizations, others may view it as unwanted during a time of mourning.

There is an inherent tension between the Health & Safety Code, which encourages organ and tissue donation, and H.B. 4490, which imposes clear restrictions on the disclosure of the very information sometimes needed to facilitate such donations. Given this statutory framework, counties must proceed cautiously, and Bexar County has done so. While the County has historically maintained cooperative partnerships with tissue and corneal donation organizations and fully appreciates the life-saving value of organ and tissue donation, the law is unequivocal. In the absence of express statutory authorization, absent a subpoena or the authority of “other law,” disclosure of next of kin information exposes county officials to criminal liability.

While tissue donation organizations may contend that donation statutes constitute “other law” permitting the disclosure of next of kin information, those statutes do not reference or address the handling of next of kin information. The governing principle is one of restraint: courts cannot add to or take from legislative enactments under the guise of statutory construction. Only the Attorney General or the Legislature can reconcile the statute’s unambiguous restriction on the public release of next of kin information with the broader public policy favoring donation.

CONCLUSION

H.B. 4490 has created significant uncertainty for counties, medical examiners, and nonprofit donation organizations, with potential violations exposing county personnel and medical examiners to criminal penalties. The statute contains no express exception for tissue and corneal donation organizations, and Texas law does not recognize implied exceptions to confidentiality. At the same time, other provisions of Texas law actively encourage timely organ and tissue donation. While H.B. 4490 does not directly alter those statutes, it restricts the release of next of kin information to protect the privacy of grieving families, indirectly affecting the efficient administration of donation matters. This leaves county officials in the difficult position of either risking criminal liability for disclosure or inadvertently frustrating public health objectives.

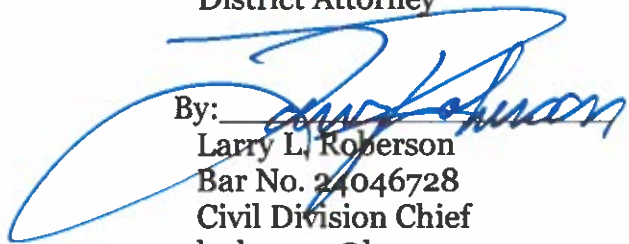
Although some media and tissue and organ donation advocates have framed this simply as a matter of “common sense,” the issue is ultimately one of statutory interpretation and the application of established legal principals. Counties must follow the law as written, and authoritative guidance is necessary to ensure that the Legislature’s protective intent is upheld while maintaining the state’s commitment to facilitating organ and tissue donation.

For these reasons, we respectfully request that the Attorney General issue an opinion addressing the Questions Presented above. Until such guidance is provided, counties and medical examiners must continue to withhold next of kin information to ensure compliance with the law as written and avoid potential criminal liability

Respectfully Submitted,

JOE D. GONZALES

Bexar County Criminal
District Attorney

By: 
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Exhibit “A”

BILL ANALYSIS

H.B. 4490
By: Smithee
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill author has informed the committee that a county medical examiner's office plays a critical role in locating next of kin to ensure proper communication about autopsy processes and the release of remains for burial and to assist with providing medical history information in death investigations; however, in recent years such offices have received requests for next of kin data, such as names, relationships, addresses, and phone numbers, under state public information law from marketing firms who then sell this information to third parties. The bill author has further informed the committee that some families who are aware of this are deterred from cooperating with the medical examiner's office, ultimately hampering investigations and delaying processes. H.B. 4490 seeks to protect families' privacy and ensure that information may still be disclosed for legitimate purposes, such as law enforcement, by establishing that the disclosure of information relating to the next of kin of a decedent is excepted from state public information law but otherwise permitted for certain purposes.

CRIMINAL JUSTICE IMPACT

- It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

- It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 4490 amends the Code of Criminal Procedure to establish that information relating to the next of kin of a decedent is excepted from required public disclosure in accordance with state public information law but is subject to disclosure under subpoena or authority of other law. The bill applies to a request for information that is received by a governmental body or an officer of public information on or after the bill's effective date. A request for information that was received before the bill's effective date is governed by the law in effect on the date the request was received, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

Exhibit “B”

Bexar County misinterpretation of new law jeopardizes tissue, corneal donations

Bexar County officials ought to employ more critical thought than they're displaying in this matter.

By [Express-News Editorial Board](#), *Opinion Staff* Sep 10, 2025

The Texas Legislature has passed multiple bills that we consider harmful — even cruel — to people in our state.

But in some ways, it's more infuriating when a reasonably well-intentioned law causes harm because public officials misinterpret it — and are too obstinate to admit they are wrong.

Such is the case with [House Bill 4490](#), which Bexar County [has been citing as its reason to stymie organizations](#) that facilitate human tissue and corneal donations from recently deceased people to improve or even save the lives of those still living.

Groups such as the [San Antonio Eye Bank](#) and [South Texas Blood & Tissue](#), the area's only tissue recovery agency, have a short time, generally 24 hours, to safely collect donations. So while they can track down next of kin to verify a loved one's intention to give after death, the inability to get contact information directly from the Bexar County Medical Examiner's Office puts the endeavor in jeopardy of exceeding the time frame.

HB4490, filed by state Rep. John Smithee, R-Amarillo, and passed during the recent regular legislative session, sought to shield family members of recently deceased people from unsolicited marketing messages, such as those selling funeral services.

Perhaps an out-of-context reading of the new law could be extrapolated to turn away tissue and corneal donation organizations with a glib “sorry, can't help.” But Bexar County officials — particularly Larry Roberson, chief of the civil division of the District Attorney's Office, and Chief Medical Examiner Dr. Kimberley Molina — ought to employ more critical thought than they're displaying in this matter.

While the issue is confounding to anyone with a modicum of common sense, it must be more so for Jim Wagner, president and CEO of the San Antonio Eye Bank, given that he expressed concern HB4490 might be interpreted this way only to be assured by members of Smithee's staff that the bill was not meant to curtail organizations like eye and tissue banks.

“It was aimed at shady marketing practices, not us,” Wagner said.

But one need not take his word for it. The underlying rationale for HB4490 is available for anyone to read.

There's a reason why the first section in every bill analysis report — issued by Texas House and Senate committees on the legislation they consider — is the one labeled “Author's / Sponsor's Statement of Intent.”

In the case of HB4490, that section makes clear what Smithee sought to curtail.

It states that county medical examiners “have raised concerns about increasing trends in public information requestors seeking disclosure of next of kin information” and that they “have noticed that the requestors are marketing firms” that sell such information to third parties.

It goes on to express concern that third parties may contact people “to offer funeral services before a descendant is notified of their family member’s death.”

There’s no mention of concern that a legitimate healing organization might have the audacity to offer a family the opportunity to give their loved one’s tragedy a glimmer of meaning through the medical miracle of transplantation.

The real concern is — as Audra Taylor of South Texas Blood & Tissue told Express-News reporter Nancy M. Preyor-Johnson — “that losing access to this contact information will significantly reduce tissue donations.”

Taylor estimates about six fewer recoveries a month, each of which can help about 75 patients.

Roberson and Molina insist that it’s a shame they can’t help, despite the local medical examiner’s office appearing to be the only one in the state claiming that HB4490 ties its hands.

But the reality is that the only thing tying it up is its leaders’ intransigence.

[Express-News Editorial Board](#)

Opinion Staff

Exhibit “C”

BILL ANALYSIS

Senate Research Center

H.B. 4490
By: Smithee (Bettencourt)
Business & Commerce
5/13/2025
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

County medical examiner's offices have raised concerns about increasing trends in public information requestors seeking disclosure of next of kin information, including the names, addresses, relationships, and phone numbers for next of kin individuals. Medical examiner's offices have noticed that the requestors are marketing firms, which sell the case-related information to third parties, who contact family members regarding the death of a family member.

County medical examiners make a good-faith effort to locate next of kin descendants to ensure loved ones are kept apprised of the autopsy process and so bodies can be released to the correct party for burial. Medical examiners have raised concerns that family members may be unaware that their contact information can be shared with third parties, and that third parties may contact decedents to offer funeral services before a descendant is notified of their family member's death.

H.B. 4490 seeks to alleviate these privacy concerns by exempting next of kin information from public disclosure under the Public Information Act.

H.B. 4490 amends current law relating to an exemption from required disclosure of information related to the next of kin of deceased persons.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11, Article 49.25, Code of Criminal Procedure, by adding Subsection (d) to provide that the information relating to the next of kin of a decedent is excepted from required public disclosure in accordance with Chapter 552 (Public Information), Government Code, but is subject to disclosure under subpoena or authority of other law.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2025.

Exhibit “D”



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MEMORANDUM

Date: July 29, 2025

From: Frank B. Burney;
Carter F. Scharmen

To: Bexar County District Attorney's Office, Civil Division

Re: H.B. 4490 passed by the 89th Texas Legislature during the Regular Session (the "Bill") to be codified as an amendment to Tex. Code Crim. Proc. art 49.25, §11.

The law firm of Martin & Drought, P.C. (the "Firm") has been retained to represent BioBridge Global ("BBG") in connection with the above referenced matter. This memorandum explains why the Bill does not apply to tissue and eye banks like BBG.

Based on the Firm's conversation with the Chief of Staff for State Representative Smithee and the Travis County Intergovernmental Relations Office regarding the legislative intent of the Bill, it is not intended to apply to tissue and eye banks such as BBG. The impetus for the Bill came from the Travis County Medical Examiner's Office, which was receiving public information requests for next of kin information from marketing firms. These marketing firms would then supply the information to companies that provide funeral services.

According to employees of Travis County, the clause at the end of the amended language in the Bill, which reads "but is subject to disclosure under subpoena or other authority of law" specifically excepts organizations such as BBG from the application of this law. *See* Act of June 20, 2025, 89th Leg., R.S., H.B. 4490, §1(d) (to be codified as an amendment to Tex. Code Crim. Proc. art 49.25, §11). Travis County considers the phrase "but is subject to disclosure under...other authority of law" to mean other statutes control and supersede over the Bill in connection with next of kin disclosures to tissue and eye banks. *See Id.*

According to the drafters of the Bill, the following relevant statutes would still allow for the disclosure of next of kin information to both law enforcement and donor agencies:

1. Code of Criminal Procedure, Article 49.25, Sec. 11(c).

(c) The medical examiner may release a copy of an autopsy report of a deceased person to any organ and tissue procurement organization, hospital, or other covered entity as defined by Section 181.001, Health and Safety Code, that treated the deceased person before death or procured any anatomical gift from the

body of the deceased person. The release of a report under this subsection is not considered a disclosure under Chapter 552, Government Code. A report obtained under this subsection is confidential and not subject to disclosure under Chapter 552, Government Code.

TEX. CODE CRIM. PROC. ANN. art. 49.25, §11 (c) (emphasis added).

2. Health & Safety Code, Section 693.002.

(b) On a request from a tissue bank, as defined by Section 692A.002, the medical examiner may permit the removal of tissue believed to be clinically usable for transplants or other therapy or treatment from a decedent who died under circumstances requiring an inquest if consent is obtained pursuant to Sections 692A.005 through 692A.010 or Section 693.003 or, if consent is not required by those sections, no objection by a person listed in Section 692A.009 is known by the medical examiner. If the medical examiner denies removal of the tissue, the medical examiner shall explain in writing the reasons for the denial. The medical examiner shall provide the explanation to:

- (1) the tissue bank; and
- (2) the person listed in Section 692A.009 who consented to the removal.

TEX. HEALTH & SAFETY CODE ANN. §693.002 (b)

Under Section 692A.010 of the Texas Health and Safety Code, certain classes of individuals listed in Section 692A.009 are permitted to make anatomical gifts of the decedent's body. However, if an individual listed in "Section 692A.009 cannot be identified and contacted within four hours after death is pronounced...the county court may permit the removal of a nonvisceral organ or tissue." See TEX. HEALTH & SAFETY CODE ANN. §693.003 (emphasis added).

The interpretation of law adopted by the Bexar County District Attorney's Office ignores the phrase, "but is subject to disclosure under subpoena or other authority of law," and by doing so ignores the language in the Bill, which is intended to permit other laws expressly to the contrary to supersede and control over the effect of the Bill. The language provides a "carve-out" for organizations like BBG to contact next of kin.