



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Mr. Mark C. Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2017-23131

Dear Mr. Kratovil:

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# 679744.

The Tarrant County Medical Examiner's Office (the "medical examiner's office") received a request for specified contact information and all documents in the investigation of a specified case. You state you have released certain information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the medical examiner's office has not submitted information responsive to the portion of the request seeking specified contact information. We assume, to the extent any information responsive to this portion of the request existed on the date the medical examiner's office received the request, the medical examiner's office has released it. If the medical examiner's office has not released any such information, it must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000)* (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. The medical examiner's office claims that the submitted information is confidential under section 671.011 of the Health and Safety Code. Subchapter B of chapter 671 of the Health and Safety Code is applicable to autopsy reports. Section 671.011 provides as follows:

(a) In this subchapter, "autopsy report" includes:

(1) the report of the postmortem examination of the body of a person, including x-rays and photographs taken during the actual postmortem examination; and

(2) the toxicology report, if any, and other reports that involve an examination of the internal organs and structures of the body after dissection.

(b) An autopsy report does not include investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.

Health & Safety Code § 671.011. You note that section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. You contend, however, that the submitted information does not come within the definition of an autopsy report under section 671.011(b) of the Health and Safety Code and therefore is confidential by law and excepted from public disclosure. However, section 671.011 merely excludes certain types of information from the statutory definition of an autopsy report for purposes of subchapter B of chapter 671. This statute neither provides that the excluded information is confidential by law nor prohibits the release of such information to the public. In order for section 552.101 to apply, a statute must contain language expressly making certain information confidential; confidentiality cannot be implied from the structure of a statute or rule. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987); *see also* Open Records Decision Nos. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because statute designates other specific information as public information). Accordingly, the medical examiner's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 671.011 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may

disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. We note, because the laws governing the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from the DPS or another criminal justice agency may be disseminated only as permitted by subchapters E-1 and F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. We further note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we find the information we have marked consists of confidential CHRI which the medical examiner's office must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, the medical examiner's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 679744

Enc. Submitted documents

c: Requestor
(w/o enclosures)