

EDWIN E. POWELL, JR.  
COUNTY ATTORNEY, CORYELL COUNTY  
P. O. BOX 796  
113 SOUTH 7TH STREET  
GATESVILLE, TEXAS 76528  
TELEPHONE (254) 865-8261  
FACSIMILE (254) 865-9080

RQ-0380-02

FILE # ML-41982-D1  
I.D. # 41982

February 21, 2001

RECEIVED  
FEB 23 2001  
OPEN RECORDS DIVISION

Attention: Open Records Request  
Office of the Attorney General  
P O Box 12548  
Austin, Texas 78711-2548

RECEIVED  
MAY 01 2001  
OPINION COMMITTEE

FILE # OR-146523-01  
I.D. # 146523

Gentlemen:

The Justice of the Peace of Coryell County has received a request under the Open Records Act pertaining to the release of a "provisional autopsy report" on a deceased inmate at a local facility of the Texas Department of Criminal Justice. As this report is not a final autopsy report, the law appears to be unclear as to whether a required release of this report is necessary. My question to you is should Coryell County release the provisional autopsy report, a copy of which is attached to this request, to the requesting party or may we withhold it pending receipt of the final and "completed" autopsy report?

A review of the pertinent law indicates that under Section 552.022 of the Government Code subsection (A)(i) indicates as follows: "Without limiting the amount or kind of information that is public information under this chapter the following categories of information are public information and not excepted as required disclosure under this chapter unless they are expressly confidential under other rules (1) a completed report, audit, evaluation . . ." (emphasis added). Furthermore, Section 552.029 lists certain items that are required for disclosure under the provisions of the Government Code for inmates of the Department of Criminal Justice. No specific statement is made of an autopsy report of a deceased inmate, particularly one who dies in custody.

Section 552.108 of the Government Code also provides an exception for certain law enforcement and prosecutorial information in that it states as follows in Section (a) "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if (1) release of the information would interfere with the detection, investigation, or prosecution of crim." Although the matter in question involves an inmate who died while in custody at a Texas Department of Criminal Justice facility, the Justice of the Peace, in his role as "medical examiner" is required to make a report of the death of each individual under his jurisdiction. Such a report, whether or not an autopsy is required, can, or may, result in a criminal investigation. It is therefore the opinion of this writer that the intent of the legislature in its enactment of Section 552.108 would be for such matters to remain not subject to disclosure until a potential investigation into a death was completed. In the instant case, the autopsy report received from the University of Texas Medical Branch is only a provisional autopsy report and a final report will follow later.

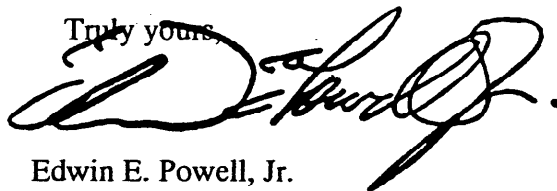
Lastly, the requesting party has cited your opinion in OR2000-1338 in which you note that autopsy reports must be released to the public under Section 11 of Article 49.25 of the Code of Criminal Procedure. However, that opinion does not really speak to the question at hand. A

close reading of Section 49.25, Code of Criminal Procedure, Section 11, states the following provision "the full report" (emphasis added) and detailed findings of the autopsy, if any, shall be part of the record." Once again, it appears that the intent of the legislature is to only require the disclosure of a full, or completed, autopsy report. Provisional autopsy reports such as the one in question are not full, final, or completed reports and therefore can be withheld for the benefit of the families and all parties until a final disposition is made.

In conjunction with this request I submit to you a copy of the facsimile written request from the requesting party which was not received until Monday, February 12, 2001 by the appropriate party holding the information, namely, Justice of the Peace of Coryell County, Jimmy Wood. A copy of the report in question, with only the pertinent information, is attached also, although the remaining information in the autopsy is withheld pending your decision on our request.

Looking forward to your prompt reply, I remain

Truly yours,



Edwin E. Powell, Jr.  
Coryell County Attorney

EDP, Jr./s

cc Judge Jimmy Wood  
Erin Koenig, The Examiner