

- SUBJECT:** Confidentiality of certain autopsy records
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth
- 0 nays
- WITNESSES:** For — John Dahill, Texas Conference of Urban Counties; (*Registered, but did not testify*: Leonardo Coelho, Travis County Commissioners Court; Claudia Russell, El Paso County; Cathy Sisk, Harris County; Steven Tays, Bexar County Criminal District Attorney’s Office; Justin Wood, Harris County District Attorney’s Office)
- Against — Joseph Larsen, Freedom of Information Foundation of Texas; (*Registered, but did not testify*: Michael Schneider, Texas Association of Broadcasters)
- On — Amanda Crawford, Office of the Attorney General
- BACKGROUND:** Government Code, ch. 552 is the Public Information Act, which ensures public access to records and other material maintained by governmental bodies. Government Code, ch. 552, subch. G requires a governmental body wishing to withhold requested public information that it considers to be excepted from public disclosure to ask for a decision from the attorney general about whether the information is within that exception and therefore may be withheld.
- Code of Criminal Procedure, art. 49.25, sec. 11 governs medical examiner records of death investigations. It states that the records are subject to disclosure under the Public Information Act, except that photographs and x-rays taken of a body during an autopsy are excepted from disclosure unless:
- they are required under subpoena or authority of other law; or
 - the subject of the photographs or x-rays died while in the custody of law enforcement.

Government Code, sec. 552.108 provides an exception to the Public Information Act for certain law enforcement information. Under certain circumstances, information held by a law enforcement agency or prosecutor relating to the detection, investigation, or prosecution of a crime is not subject to public disclosure.

DIGEST: CSHB 688 would allow a unit of government to withhold a photograph or x-ray of a body taken during autopsy that was not subject to disclosure under Code of Criminal Procedure, sec. 11, art 49.25 without requesting a decision from the attorney general. The bill would not affect the required disclosure of photographs or x-rays that fall under the section's two exceptions.

The bill would take effect September 1, 2013 and would apply only to requests for information received on or after that date.

SUPPORTERS SAY: CSHB 688 would save county offices and the attorney general's office time and effort spent on unnecessary paperwork. Although the Code of Criminal Procedure exempts most autopsy photographs and x-rays from public disclosure, governmental bodies that hold these records, generally county offices, are still required to write a letter to the attorney general to confirm this exception when they are requested. The exception for autopsy photographs and x-rays is clear cut and easy for the governmental body holding the records to apply. Requiring a letter from the attorney general to confirm this established exception wastes time and resources.

CSHB 688 simply would remove an unnecessary bureaucratic step and would not erode transparency. When this exception is cited, the resulting decision from the attorney general nearly always confirms that the records in question fall under the exception. Exceptions to the general rule requiring an attorney general's decision have been implemented for other kinds of records without a deleterious effect on government transparency.

Because of their sensitive nature, autopsy photographs and x-rays deserve special consideration. These images require additional protection because they have been increasingly abused with the growth of the Internet. Graphic and disturbing autopsy photographs released through the Public Information Act sometimes are posted online and widely disseminated, which is an abuse of the law's intended purpose and a violation of the privacy of the subject and his or her grieving family. Autopsy photographs and x-rays should remain excepted from mandatory disclosure except

under special circumstances when public interest trumps the privacy and interests of the deceased person they depict.

OPPONENTS
SAY:

CSHB 688 would not have a significant impact on the time and work that counties and the attorney general spend on these decisions, at a potentially large cost to government transparency. Any time or resources CSHB 688 would save would not be worth the negative effect on government oversight. Requests relating to autopsy photographs and x-rays are a small portion of the request letters the attorney general receives every year. Previous efforts to relieve the burden on the attorney general by exempting governmental bodies from the letter requirement have had no significant impact on the number of letters the office received. The fiscal note confirms that any reduction in the workload of local government units resulting from this bill would not achieve significant cost savings.

CSHB 688 would erode government transparency by removing important oversight mechanisms. With few exceptions, requests for attorney general decisions are required when a governmental body decides to withhold information it believes is not subject to disclosure. This provides a necessary check to prevent governmental bodies from incorrectly withholding information the public should be able to access. Carving out a special exception for autopsy photographs and x-rays that would allow governmental bodies to withhold them without going through the attorney general would short-circuit a crucial oversight process.

Over time, the availability of these records has been diminished by new laws, attorney general opinions, and the increased use of the law enforcement exception in Government Code, sec. 552.108. If a death is important enough to warrant an autopsy, it also merits access by the public, even if it relates to the ongoing investigation of a crime. Although public posting of these photographs and x-rays is deplorable, the potential for abuse does not disqualify the public's interest in accessing them nor nullify the need to preserve the strength of the Public Information Act.

NOTES:

CSHB 688 differs from the bill as filed by specifying that the bill would not affect the required disclosure of a photograph or x-ray under the section's two exceptions.

The companion bill, SB 457 by Rodríguez, was passed by the Senate by a vote of 31-0 on April 11. It was reported favorably by the House Committee on Criminal Jurisprudence on April 23.

