

NO. 2024CVK000996D3

MICHELLE GARCÍA § IN THE DISTRICT COURT  
§  
§  
V. § \_\_\_\_\_ JUDICIAL DISTRICT  
§  
WEBB COUNTY §  
MEDICAL EXAMINER’S OFFICE § WEBB COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION AND  
REQUEST FOR WRIT OF MANDAMUS**

PLAINTIFF (“Michelle García”) files this original petition against the Webb County Medical Examiner’s Office, DEFENDANT (“Webb County” or “WCMEO”), to remedy violations of the Texas Public Information Act (“TPIA”), Texas Government Code Chapter 552, and will show:

**STATEMENT OF CLAIM**

1. On March 22, 2023, Plaintiff Michelle García requested records under the Texas Public Information Act concerning autopsies performed by medical examiners on individuals who died near the U.S.–Mexico border, along with related communications. *See* Ex. A. The records Ms. Garcia sought pertain to migrant deaths near the U.S.–Mexico border—deaths that are a regular, distressing occurrence and have resulted in the International Organization for Migration christening the U.S.-Mexico border “the deadliest land route for migrants worldwide on record.” Press Release, *US-Mexico Border World’s Deadliest Migration Land Route*, International Organization for Migration (Sept. 12, 2023), <https://www.iom.int/news/us-mexico-border-worlds-deadliest-migration-land-route>. Webb County refuses to produce these documents because the County maintains the requested records are judicial records excepted from disclosure under the TPIA. *See* Ex. C (citing Tex. Gov’t Code § 552.0035).

2. As a result, Ms. García must now bring this action seeking a statutory writ of mandamus, attorney’s fees, and costs to vindicate her right to receive these autopsy records. Ms. García also seeks a declaration that public access to autopsy records would play a significant positive role in death investigations, and that these records are subject to a right of access under both the United States and Texas Constitutions, and the common law.

### **DISCOVERY CONTROL PLAN**

3. Discovery in this matter will proceed under Level 2 of the Texas Rules of Civil Procedure. TEX. R. CIV. P. 190.3.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction under Government Code Section 552.321(b), which authorizes “a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body . . . refuses to supply public information.” Tex. Gov’t Code § 552.321(b).

5. This Court also has jurisdiction under 42 U.S.C. § 1983, which creates a cause of action for deprivations of rights secured by the United States Constitution. This Court has mandatory jurisdiction over federal constitutional claims raised under Section 1983. *See Thomas v. Allen*, 837 S.W.2d 631, 632 (1992) (per curiam).

6. WCMEO is in Webb County, Laredo, Texas. Venue in this case is therefore proper because it was “filed in a district court of the county in which the main offices of the governmental body are located.” Tex. Gov’t Code § 552.321(b).

### **PARTIES**

7. Michelle García is a multi-platform journalist and filmmaker based in Brownsville, Texas and New York City, New York. Ms. García is working on a non-fiction book about borders for

Viking/Penguin Random House, and an investigative reporting project in South Texas supported by the Fund for Investigative Journalism. See Michelle García, *About*, <https://michellegarciainc.com/about-3/> (last visited Jun. 10, 2024). She regularly reports on and publishes commentary about U.S.-Mexico border conditions and their impact on migrants, especially in relation to broader state and national political dynamics. See, e.g., Michelle García, *The Ugly History at the Root of the Border Standoff*, N.Y. Times (Apr. 20, 2024), <https://www.nytimes.com/2024/03/01/opinion/border-immigration-texas.html>; Michelle García, *Opinion: The US must free itself of political delusions about the border*, CNN (Nov. 4, 2022, 2:20 PM), <https://www.cnn.com/2022/11/04/opinions/border-political-delusions-garcia/index.html>; Michelle García, *Security Theater: U.S. Border Authorities Failed to Prepare for Influx of Haitian Migrants Despite Weeks of Warnings*, The Intercept (Oct. 1, 2021, 2:04 PM), <https://theintercept.com/2021/10/01/haiti-migrants-texas-del-rio-border/>. For her coverage of migration and the border, she received the American Mosaic Journalism Prize and the Covering Climate Now Journalism Award. For the past several years, Ms. García has sought to uncover accurate information behind the deaths of unidentified migrants near the South Texas border, including a more precise number of deaths and the causes behind them, by requesting access to autopsy records from Webb County and various Justices of the Peace in the region.

8. WCMEO is located at US-59 & State Representative Henry Cuellar Roadway, Laredo, TX 78045. It is the governmental body that creates and maintains possession, custody, and control over the records Ms. García has requested.

### **TEXAS PUBLIC INFORMATION ACT**

9. The Texas Public Information Act is a vital tool for keeping the public “informed so that they may retain control over the instruments they have created.” Tex. Gov’t Code § 552.001(a).

Under the TPIA, “each person is entitled . . . at all times to complete information about the affairs of government and the official acts of public officials and employees.” *Id.* Requests for information are to be “liberally construed in favor of granting a request for information.” *Id.* at § 552.001(b).

10. The Act defines “public information” expansively. *See id.* at § 552.002. To qualify as public information subject to the Act, the information requested must broadly meet two conditions. *First*, the information must be “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business.” *Id.* at § 552.002(a). *Second*, the information must be maintained in one of three ways: (i) “by a governmental body;” (ii) “for a governmental body and the governmental body . . . owns the information; has a right of access to the information; or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;” or (iii) “by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.” *Id.* at §§ 552.002(a)(1)–(3).

11. The TPIA defines a “[g]overnmental body” in part as “a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;” and “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]” *Id.* at §§ 552.003(1)(A)(iv), (xv).

12. In addition, the TPIA declares that “a completed report” made by a governmental body, except as provided by Section 552.108, is public information and must be disclosed unless it is “made confidential.” Tex. Gov’t Code § 552.022(a)(1).

13. When a requestor submits a request for public records, a governmental body “shall promptly produce public information for inspection, duplication, or both on application by any

person to the officer.” *Id.* at § 552.221(a). Section 552.221 defines “promptly” as meaning “as soon as possible under the circumstances, that is, within a reasonable time, without delay.” *Id.*

14. If a governmental body wishes to withhold public information under an exception in the TPIA, it must request an Attorney General opinion “within a reasonable time, but not later than the tenth business day” after receipt of the request. *Id.* at § 552.301(b). The governmental body’s request for an Attorney General opinion must state all “exceptions that apply,” along with “written comments stating the reasons why the stated exceptions apply.” *Id.* at §§ 552.301(b), (e).

15. In other words, it must show that the requested information is within at least one of the exceptions to required disclosure. *See* Open Records Decision 363 at 1 (1983) (explaining that records must be disclosed “unless they fall within one of the particular exceptions applicable”); Open Records Decision 91 at 2 (1975) (“The Act makes all information public unless excepted.”). These exceptions “should be construed narrowly.” *Arlington Indep. Sch. Dist. v. Tex. Att’y Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.).

16. The governmental body must then submit to the Attorney General, no later than the fifteenth business day after receipt of the request, a copy of the information requested, or a representative sample of the information requested. *Id.* at § 552.301(e).

17. If the Attorney General authorizes the continued withholding of public records, the TPIA empowers the requestor to “file suit for a writ of mandamus compelling a governmental body to make information available for public inspection” *Id.* at § 552.321(a); *see also* *Tex. Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no pet.).

## **RIGHT OF ACCESS**

18. The constitutional right of access is derived from both the U.S. Constitution and the Texas Constitution. *See* U.S. Const. amend. I; Tex. Const. Art. 1, § 13. Moreover, courts around the

country have also recognized a common law right to inspect and copy a broad range of public records and documents, including judicial records. *See, e.g., Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978); *see also United States v. Sealed Search Warrants*, 868 F.3d 385, 390 (5th Cir. 2017).

#### **A. First Amendment Right of Access**

19. The First Amendment to the United States Constitution guarantees the public a right of access to governmental proceedings and records. *See* U.S. Const. amend. I. Courts presumptively allow the public access to proceedings and records that meet a two-part test examining (1) “whether the place and process have historically been open to the press and general public” (the “experience” prong) and (2) “whether public access plays a significant positive role in the functioning of the particular process in question” (the “logic” prong). *Press-Enter. Co. v. Superior Ct.*, 478 U.S. 1, 8–9 (1986). If a court applying the experience and logic prongs finds the First Amendment right of access attaches, the government must demonstrate an overriding interest, based on findings that restricting access is “essential to preserve higher values and is narrowly tailored to serve that interest.” *See id.*

20. This right of access applies to judicial records as well as court proceedings. *See, e.g., Dhiab v. Trump*, 852 F.3d 1087, 1099 (D.C. Cir. 2017) (“[E]very circuit to consider the issue has concluded that the qualified First Amendment right of public access applies to civil as well as criminal proceedings.”) (Rogers, J. concurring in part) (collecting cases).

#### **B. State Constitutional Right of Access**

21. There is also a separate and distinct right of access through the Texas Constitution, which mandates that “[a]ll courts shall be open.” Tex. Const. Art. 1, § 13. Under the “mandates of the Texas Constitution,” Rule 12.1 of the Texas Rules of Judicial Administration “provide[s] public

access to information in the judiciary.” Tex. R. Jud. Admin. 12.1 (explaining that “public interests are best served by open courts and by an independent judiciary”).

22. Significantly, the federal and state constitutional rights of access provide the press and the public “access to information concerning crime in the community, and to information relating to activities of law enforcement agencies.” *Houston Chron. Pub. Co. v. City of Houston*, 531 S.W.2d 177, 186–188 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam). The right was meant to ensure “citizens can make informed decisions concerning the actions of the government,” which is consistent with First Amendment principles. *Houston Chron. Pub. Co.*, 531 S.W.2d at 186–188; *see also Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 604 (1982) (noting that “a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs”).

23. In determining if the constitutional right of access attaches, courts “weigh and evaluate legitimate competing interests.” *Houston Chron. Pub. Co.*, 531 S.W.2d at 186. Texas courts recognize that an important legitimate interest is the “people’s right to know,” which is “particularly sensitive and important” as applied to official activities. *Id.* For this reason, a Texas appellate court has extended a “constitutionally protected right of the press and public” to general information concerning local crimes. *See id.* at 186–87.

### **C. Common Law Right of Access**

24. Courts across the country also “recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon*, 435 U.S. at 597.

25. Whether records are subject to the common law right of access is considered “on a case-by-case basis by balancing the public’s right of access with interests favoring nondisclosure.” *Sealed Search Warrants*, 868 F.3d at 388. Courts across the country have uniformly held that “the

party seeking to have court documents restricted from public access has the burden of establishing that the presumption of public records should be overcome, and that the burden is a heavy one.” *Lipocine Inc. v. Clarus Therapeutics, Inc.*, No. CV 19-622 (WCB), 2020 WL 4569473 (D. Del. Aug. 7, 2020) (collecting cases); *cf.* Tex. R. Civ. P. 76a. Courts have also recognized that “when the conduct of public officials is at issue, the public’s interest in the operation of government” weighs in favor of access. *United States v. Beckham*, 789 F.2d 401, 413 (6th Cir. 1986).

## STATEMENT OF FACTS

### A. The South Texas Border Crisis

26. According to a 2020 report, “more migrants die in South Texas than anywhere else in the country.” Stephanie Leutert, Sam Lee, & Victoria Rossi, *MIGRANT DEATHS IN SOUTH TEXAS* 2, 6 (Univ. of Tex. at Austin Strauss Ctr. for Int’l Sec. and Law, May 2020), [https://www.strausscenter.org/wp-content/uploads/Migrant\\_Deaths\\_South\\_Texas-1.pdf](https://www.strausscenter.org/wp-content/uploads/Migrant_Deaths_South_Texas-1.pdf).

Furthermore, Webb County has recorded more migrant deaths in recent years than any other county in the region. *Id.* This has earned it the dubious distinction of being “the most dangerous place in South Texas for migrants entering the United States.” *Id.* Though the exact death toll is uncertain, these researchers found that at least 3,253 individuals have died entering South Texas during a 22-year period. *See id.* at 2. In 2022 alone, the United States Customs and Border Patrol recorded 895 border deaths. *See* U.S. CUSTOMS AND BORDER PROTECTION, *BORDER RESCUES AND MORTALITY DATA*, <https://www.cbp.gov/newsroom/stats/border-rescues-and-mortality-data> (last visited Jun. 10, 2024).

27. However, some believe that the true death toll is significantly higher, in part, because officials do not always thoroughly investigate or contact Border Patrol to record the death of a migrant. *See, e.g., Molly Kaplan and M. Katherine Spradley, Lost in Plain Sight: How Current*



*Burial Practices Impact Migrant Death Investigation in South Texas*, 46 *Annals of Anthropological Practice* 122, 123 (Nov. 2022), available at <https://doi.org/10.1111/napa.12189>; Jasmine Aguilera, *More Migrants Die Crossing the Border in South Texas Than Anywhere Else in the U.S. This Documentary Depicts the Human Toll*, TIME (Aug. 20, 2021, 5:22 PM), <https://time.com/6091742/migrant-deaths-texas-documentary/>; Caroline Tracey, *When There's No One to Attend to the Dead*, THE NATION (Oct. 12, 2023), <https://www.thenation.com/article/society/texas-death-investigation/> (reporting that the quality of death investigation is variable and high costs disincentivize autopsies from being ordered).

28. Making matters worse, Justices of the Peace, who oversee death investigations in Texas counties without a medical examiner, have limited access to medical examiners due to a shortage of these professionals in the state. See Mary Cantrell & Big Bend Sentinel, *In Rural Far West Texas, Justices of the Peace Confront a Death-Investigation System That's Failing Unknown Migrants*, TEXAS MONTHLY (Dec. 14, 2022), <https://www.texasmonthly.com/news-politics/far-west-texas-death-id-system-failing-migrants/>. The Webb County Medical Examiner, Dr. Corinne Stern, is the only ME generally available for counties along the border other than El Paso and Hidalgo. This shortage of medical examiners in the region, coupled with an increase in deaths, presents serious challenges to properly identify and track migrant deaths in the region.

29. With the delay in identifying the deceased, Dr. Stern highlighted an urgent challenge: she was running “out of space” to store bodies, “[w]ith 260 migrant bodies in her custody in five coolers.” Rosa Flores & Rosalina Nieves, *A Texas sheriff says he finds the bodies of migrants almost every day. 2022 could be the deadliest year yet for migrants crossing at the US border*, CNN (Aug. 24, 2022, 9:41 AM), <https://www.cnn.com/2022/08/24/us/texas-migrant-deaths-rising-border-crossing/index.html>.

30. More recently, a coalition of forensic professionals tracking this humanitarian crisis sent an open letter in February to Mr. Leroy R. Medford, the Executive Administrator at the Webb County Commissioners Court, identifying a number of concerns it had collected regarding WCMEO's lack of compliance with state law, forensic best practices, and basic standards of professionalism. *See* Forensic Border Coalition, Letter to L. Medford, dated Feb. 27, 2024. A copy of the letter is attached hereto as **Exhibit B** and incorporated by reference.

31. The letter alleged, among other things, that the Medical Examiner has failed to “provide case information to the Justices of the Peace . . . or Sheriff’s Offices in a timely manner (if ever)[;]” that it has failed to file death certificates in a timely manner; and that it has failed to enter unidentified persons cases in the National Missing and Unidentified Persons System since 2014. If corroborated, these allegations raise serious concerns about WCMEO at a time when national scrutiny of the U.S.-Mexico border region is high.

#### **B. The Autopsy Records Request**

32. Seeking to shed light on these issues, Ms. García submitted a TPIA request to Webb County on March 22, 2023. The request is attached hereto as **Exhibit A** and incorporated by reference. Ms. García’s request asked for “[a] copy of all autopsy reports maintained by the Webb County Medical Examiner’s Office that were conducted on behalf of the following counties from January 1, 2020 to December 31, 2020: Dimmitt, Maverick, Starr and Val Verde.” *See* Ex. A.

33. Additionally, she requested “[a] copy of all communications concerning requests for autopsies submitted to the Webb County Medical Examiner’s Office from Dimmitt, Maverick, Starr and Val Verde counties from January 1, 2020, to December 31, 2020.” *See id.*

34. On information and belief, the records responsive to Ms. García’s request partly concern autopsies of unidentified migrants near the U.S.–Mexico border and communications between

Webb County and various Justices of the Peace regarding intergovernmental contracting for the provision of autopsies and related services.

35. Webb County denied Ms. García's request without explanation on March 24, 2023, and, after Ms. García inquired, the County provided an explanation for its denial on March 28, 2023.

36. On May 1, 2023, Webb County requested an Attorney General's opinion allowing it to withhold the autopsy records after Ms. García requested it do so. That request and Webb County's brief in support is attached hereto as **Exhibit C** and incorporated by reference. *See* Ex. C. On May 16, 2023, Plaintiff sent a public comment to the AG's office arguing for disclosure of the records in response to Webb County's request. The public comment is attached hereto as **Exhibit D** and incorporated by reference.

37. On July 12, 2023, the Office of the Attorney General released its opinion, Letter Ruling OR2023-23174, which is attached hereto as **Exhibit E** and incorporated by reference. The Attorney General concluded that Webb County was not obligated to release the requested records, citing Texas Government Code Section 552.0035(a). The Attorney General further stated that the "medical examiner's office was acting as the agent of the justices of the peace who ordered the autopsies" and concluded the Act "neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed." *See* Ex. E at 2.

### **C. The Requested Records Are Subject to Required Public Disclosure**

38. The Attorney General's opinion conflicts with the TPIA and the Code of Criminal Procedure, which requires the public disclosure of completed reports, and ignores clear statutory authority making autopsy reports prepared by a Medical Examiner subject to public disclosure under the TPIA. The autopsy reports and related communications requested by Ms. García fall

squarely under the TPIA's broad definition, and therefore are not excepted from required disclosure. *See* OR2002-0868 at 2 (Feb. 25, 2002).

39. Information is covered by the TPIA if (1) the requested records are “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business[.]” Gov’t Code § 552.002; and (2) the records are maintained by a “governmental body” or “by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity” *See id.* at §§ 552.002(a)(1)–(3).

40. Here, the requested autopsy reports meet the two-part test of the TPIA, triggering TPIA’s coverage as public information. *First*, the requested autopsy reports were created by WCMEO, and are therefore records “written, produced, collected, assembled, or maintained . . . in connection with the transaction of official business[.]” *Id.* § 552.002(a). *Second*, the records are maintained by WCMEO, a “governmental body” under Texas law, and are produced by the Webb County Medical Examiner in her official capacity. *See id.* § 552.002(a)(1)–(3).

41. Of the vast amount of information that could be “public” under the TPIA, the Act identifies specific types of records that *must* be disclosed unless “made confidential under this chapter or other law[.]” *Id.* § 552.022(a). This includes “a completed report” made by a governmental body, *id.* § 552.022(a)(1). Autopsy reports are “completed reports” made by the Webb County Medical Examiner, and are therefore subject to mandatory public disclosure, unless the records are made confidential by some other provision of law. *See* OR2002-0868 at 2 (Feb. 25, 2002).

42. No provision of Texas law makes autopsy reports confidential. On the contrary, Texas statutory provisions that govern the process for creating autopsy reports expressly make these reports public and subject to required disclosure under the TPIA. *See* Tex. Code of Crim. Proc. Ann. (“TCCP”) Art. 49.25, § 11(a) (“The records may not be withheld, subject to a discretionary

exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code[.]”).

43. In its briefing to the Attorney General, Webb County declined to assert that the autopsy records were confidential, or subject to any of the TPIA’s many discretionary exceptions. Instead, it argued that autopsy records are judicial records not covered by the TPIA. This argument, however, is contradicted by clear statutory language in the Code of Criminal Procedure that specifically identifies autopsy records as subject to disclosure under the TPIA. *Id.*

44. Even if the autopsy reports may also be considered judicial records, that does not override the legislature’s clear command here, to unequivocally designate these specific autopsy records as public records and subject them to the TPIA’s coverage. *See Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21 (2012) (discussing the canon of statutory construction “specific governs the general,” or “*generalia specialibus non derogant*”).

45. Alternatively, even if these autopsy reports are judicial records that are wholly outside the scope of the TPIA, they should still be available to the public under the constitutional and common law rights of access. *See, e.g.,* Open Records Decision No. 25 (1974) (finding records of a justice of the peace may be inspected under the common law right of access). This right of access is rooted in principles of transparency, openness, and accountability, and grants the public an important right to access public information. The public pays for the operation of WCMEO and is entitled to assess its performance by reviewing these records.

46. Under the First Amendment right of access, the requested autopsy reports pass both the experience and logic tests. *See Press-Enterprise Co.*, 478 U.S. at 9. *First*, the experience prong supports the disclosure of the autopsy reports. “Historically, autopsy records were generally open

to public inspection under the common law[,] with coroners and medical examiners customarily “treat[ing] autopsy reports as public records and mak[ing] the documents available to the public upon request.” Jeffrey R. Boles, *Documenting Death: Public Access to Government Death Records and Attendant Privacy Concerns*, 22 CORNELL J.L. & PUB. POL’Y 237, 280 (2012). In Texas, medical examiners’ offices were established by the Code of Criminal Procedure in 1955, see *Medical examiner*, 36 Tex. Prac., County And Special District Law § 26.9 (2d ed.), and their records were officially designated “public records by Art. 989a of the Code of Criminal Procedure.” See *Viser v. State*, 396 S.W.2d 867, 869 (Tex. Crim. App. 1965). *Second*, the logic prong likewise supports a right of access to autopsy records. Given that only 14 out of 254 counties in Texas have a Medical Examiner’s office, and death investigations are “highly fragmented and lacking in resources or oversight,” releasing autopsy records would aid in the proper functioning of the death investigation system and develop public confidence that is currently lacking. See *Molly Kaplan and M. Katherine Spradley, Lost in Plain Sight: How Current Burial Practices Impact Migrant Death Investigation in South Texas*, 46 *Annals of Anthropological Practice* 122, 123 (Nov. 2022), available at <https://doi.org/10.1111/napa.12189>.

47. Because autopsy records have been historically open to the public, and because access plays a significant positive role in the functioning of the death investigation system, experience and logic both compel a finding that the First Amendment right of access attaches. Webb County cannot demonstrate a compelling interest to overcome the right of access; nor can it offer a narrowly tailored approach to justify restricting this fundamental right.

48. Similarly, under the Texas constitutional right of access, the requested records would inform the public of the basic circumstances surrounding the deaths of unidentified immigrants found in their communities, and would not “endanger the position of the State in criminal

prosecutions.” *Houston Chron. Pub. Co.*, 531 S.W.2d at 187. Therefore, the press is entitled to the disclosure of the information “as a matter of constitutionally protected right[.]” *Id.* Such access is essential for ensuring that the public remains well-informed and that the government’s actions are held to the highest standard of scrutiny.

49. Finally, the autopsy reports are available to the public under the common law right of access. As with the balancing test under Texas’s constitutional right of access, Webb County has failed to articulate any interest that will weigh against disclosure under the common law. To the contrary, medical examiners across Texas frequently release autopsy reports as a matter of public record. Therefore, Webb County should likewise release the requested autopsy records to the public.

## **CLAIMS**

### **COUNT I VIOLATION OF TEXAS PUBLIC INFORMATION ACT TEX. GOV’T CODE § 552.321**

50. Plaintiff herein incorporates by reference all preceding allegations contained within Paragraphs 1 through 49 of this Petition as if fully set forth herein.

51. Plaintiff asserts her rights under the TPIA, which embodies the policy that the public retains control over the instruments of government they have created, as stated in Tex. Gov’t Code § 552.001(a). The Act mandates that public servants cannot unilaterally decide what is good for the people to know, thus preserving the public’s right to be informed about government operations and affairs.

52. If the Attorney General authorizes the withholding of public records, the TPIA empowers the requestor to file a lawsuit to compel disclosure. Plaintiff invokes this remedy to enforce her right to access the requested information under the Act.

53. After failing to demonstrate any statutory exception applies, Webb County continues to withhold information responsive to Ms. García's requests in violation of the TPIA.

54. To remedy this violation, Ms. García is entitled to a writ of mandamus compelling Webb County to disclose all responsive information. Tex. Gov't Code § 552.321(b).

**COUNT II**  
**VIOLATION OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION**  
**42 U.S.C. § 1983**

55. Plaintiff herein incorporates by reference all preceding allegations contained within Paragraphs 1 through 54 of this Petition as if fully set forth herein.

56. It is well established that the First Amendment of the United States Constitution, as extended to the states by the Fourteenth Amendment, affords certain members of the public and the press a qualified right to access government information. This right is crucial for ensuring transparency and accountability in the functioning of government.

57. Defendant has violated, and continues to violate, Plaintiff's First Amendment rights by denying access to records that experience and logic dictate should be public. By restricting access to autopsy records, Defendant has failed to uphold the principles of transparency and accountability essential to a democratic society.

58. Unless the Court intervenes, the Defendant will continue to infringe upon the Plaintiff's First Amendment rights of access and freedom of the press. This ongoing violation poses a significant threat not only to the Plaintiff and others who are similarly situated but also to the public and to the foundational principles of freedom of speech and press. *See Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417 (5th Cir. 2021) (describing that the "public's right of access to judicial records [as] a fundamental element of the rule of law").



**COUNT III**  
**VIOLATION OF TEXAS'S CONSTITUTIONAL RIGHT OF ACCESS**  
**Tex. Const. art. I, § 13**

59. Plaintiff herein incorporates by reference all preceding allegations contained within Paragraphs 1 through 58 of this Petition as if fully set forth herein.

60. The Texas Constitution grants the public and the press a qualified right to access public information. The right attaches when the interests in favor of disclosure outweigh the interests favoring non-disclosure. *Houston Chron. Pub. Co.*, 531 S.W.2d at 186–88.

61. Defendant has violated, and continues to violate, Plaintiff's rights secured under the Texas Constitution by denying access to records that should be public. By restricting access to these records, Defendant has failed to uphold the principles of transparency and accountability essential to a democratic society.

62. The disclosure of autopsy reports serves the public interest by shedding light on the deaths of unidentified immigrants along the U.S.-Mexico border. As such, the press holds a constitutionally protected right of access under the Texas Constitution to information about public health, public safety, and potential crime within the community.

**COUNT IV**  
**VIOLATION OF THE COMMON LAW RIGHT OF ACCESS**

63. Plaintiff herein incorporates by reference all preceding allegations contained within Paragraphs 1 through 62 of this Petition as if fully set forth herein.

64. Defendant has violated, and continues to violate, Plaintiff's common law right of access by denying her access to the autopsy records she requested. The Defendant cannot identify any specific harm from disclosure, much less satisfy the balancing test that the common law right requires.

**COUNT V**  
**DECLARATORY JUDGMENT**  
**Tex. Civ. Prac. & Rems. Code § 37.003**

65. Plaintiff herein incorporates by reference all preceding allegations contained within Paragraphs 1 through 64 of this Petition as if fully set forth herein.

66. Plaintiff is entitled to a judgment from this Court that, by unlawfully withholding public records to which Ms. Garcia has a right of access, Defendant violated Plaintiff's rights under the U.S. and Texas Constitutions, and the common law.

**ATTORNEY'S FEES**

67. Plaintiff requests all reasonable and necessary attorney's fees resulting from this litigation, pursuant to Tex. Civ. Prac. & Rems. Code § 37.009 and Tex. Gov't Code § 552.323.

68. Plaintiff also requests the Court award reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988.

**PRAYER**

69. Therefore, Plaintiff Michelle Garcia respectfully prays the Court:

- a. Declare autopsy records are public records subject to the TPIA;
- b. Declare there is a right protected by the First Amendment to the United States Constitution, Texas's Constitution, and the common law to access the requested records;
- c. Declare that the Defendant's act of withholding the requested records violates Ms. García's rights under the First Amendment, Texas Constitution, and common law rights of access;
- d. Issue a writ of mandamus requiring Webb County to turn over to Ms. García the requested records pursuant to Tex. Gov't Code § 552.321(b);

e. Enter a mandatory injunction requiring Webb County to turn over to Ms. García the requested records and documents pursuant to the First Amendment, the Texas Constitution, and the common law rights of access;

f. Order that Webb County reimburse Ms. García for the reasonable and necessary attorney's fees resulting from this litigation pursuant to Tex. Gov't Code § 552.323 and 42 U.S.C. § 1988;

g. Order all such further relief to which Ms. García is justly entitled.

Dated: June 12, 2024

Respectfully submitted,

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/s/ Peter B. Steffensen  
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**Attorneys for Plaintiff Michelle García**

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<sup>1</sup> Clinic students Suzi Goebel and Xiran Yan drafted portions of this Petition.

<sup>2</sup> Clinic students Michael Chacon and Ritika Vemulapalli drafted portions of this Petition. The Clinic is housed within Cornell Law School and Cornell University. Nothing in this Petition should be construed to represent the views of these institutions, if any.

**EXHIBIT A**  
**TPIA REQUEST**

**From:** [mg@michellegarciainc.com](mailto:mg@michellegarciainc.com) <[mg@michellegarciainc.com](mailto:mg@michellegarciainc.com)>  
**Sent:** Wednesday, March 22, 2023 11:05 AM  
**To:** Larry Sanchez <[larrysanchez@webbcountytx.gov](mailto:larrysanchez@webbcountytx.gov)>  
**Subject:** Open Records Request\_ Webb Co. Medical Examiner

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Larry Sanchez,

Please find an open records request below and attached.  
Kindly respond with confirmation of receipt.  
And please note, I am the sole submitter of this request.

Thank you for your assistance.

all best,

Michelle García  
journalist/writer  
[www.michellegarciainc.com](http://www.michellegarciainc.com)  
twitter: @pistoleraProd

Michelle García  
Journalist  
P.O. Box 3601  
Brownsville Texas 78503  
Phone: 917.770.0009  
E-mail: [mg@michellegarciainc.com](mailto:mg@michellegarciainc.com)

March 22, 2023

Attn: Larry Sanchez  
1110 Washington St.  
Laredo, Texas 78044  
[larrysanchez@webbcountytx.gov](mailto:larrysanchez@webbcountytx.gov)

Please consider this correspondence a formal petition under the Texas Public Information Act (Tex. Gov't Code §§ 552.001 et seq.) to copy or make available for inspection the following documents held by your agency:

- A copy of all autopsy reports maintained by the Webb County Medical Examiner's Office that were conducted on behalf of the following counties from [January 1, 2020 to December 31, 2020]: Dimmitt, Maverick, Starr and Val Verde.
- A copy of all communications concerning requests for autopsies submitted to the Webb County Medical Examiner's Office from Dimmitt, Maverick, Starr and Val Verde counties from [January 1, 2020 to December 31, 2020].

The Texas Public Information Act requires that you "promptly produce" the requested records unless, within 10 business days, you have sought an Attorney General's Opinion. Tex. Gov't Code §§ 552.221(a), (d); 552.301(d). If you expect a significant delay in responding to this request, please contact me with the date that you expect the request will be satisfied.

I would like to receive all correspondence and responsive documents in electronic form if possible.

In determining fees associated with processing a records request, Texas law permits records custodians to consider whether the information would primarily benefit the public. Tex. Gov't Code § 552.267(a). I am primarily engaged in disseminating information to the public as a member of the media. This request is being made as part of an investigation examining public safety operations on the border, which is currently a subject of significant interest to the public.

If you incur any costs that I will be expected to pay in responding to this request, I respectfully ask that you notify me with an estimate in advance so that I am aware of potential costs. I also request that you disclose any less costly methods for viewing the requested records if any proposed charges turn out to be cost prohibitive. Tex. Gov't Code § 552.2615(a).

If you choose, for any reason, to deny this request, I respectfully ask that you seek an Attorney General's Opinion within the 10 days provided by statute.

Thank you for your assistance. If you have any questions, please feel free to contact me using the information provided above.

Sincerely,

Michelle García  
Journalist

[www.michellegarciainc.com](http://www.michellegarciainc.com)

**EXHIBIT B**  
**FORENSIC BORDER COALITION LETTER**



November 21, 2023

WEBB COUNTY MEDICAL EXAMINER'S OFFICE (WCMEO) CHALLENGES

**1) WCMEO does not provide case information to the Justices of the Peace (JPs)—the jurisdictional authorities— or Sheriff's Offices in a timely manner (if ever).**

- JPs do not receive autopsy reports or case information when requested.
  - Numerous accounts from Brooks, Kenedy, Starr, Dimmit, and Maverick counties
- This delays the identification and repatriation process. Some JPs will not sign a death certificate without an autopsy report.
- Texas law requires the ME to maintain thorough and complete record keeping and the prompt delivery of all records to relevant authorities (TCP Art 49 sect 11).
  - The WCMEOs claim that this is due to backlogs necessitates re-evaluating the caseload of the ME's office. There are many accounts of autopsy reports not issued over a year since a case was received.
- Counties are still being charged for services while not receiving results.

**2) The WCMEO has released remains to funeral homes without notifying the jurisdictional authority.**

- Multiple accounts of JPs notified by a funeral home that has received a body released by WCMEO. It is the JP who must certify the identification and approve the release of bodies. **To release a body without providing an autopsy or identification report is legally noncompliant.**
- The reverse is also true. Multiple accounts of WCMEO not releasing remains to funeral home despite requests from the jurisdictional authorities.
  - WCMEO often refuses to accept fingerprint identifications facilitated by Border Patrols Missing Migrant Program (MMP), sheriff's offices, or consulates
  - The counties are contracting for services with the WCMEO and the JP has the jurisdictional authority to request remains back at any time

**3) Death certificates (for decedents found in Webb County) not being filed by WCMEO in a timely manner (statutory 10-day period). This is supported by death certificate data on unidentified persons.**

**4) As of 2021, with the passing of John and Joseph's Law (HB1416), it is mandatory to enter all unidentified persons cases into NamUs, the National Missing and Unidentified Persons System, within 60 days, [www.namus.gov](http://www.namus.gov).**

- The WCMEO has not published a case in NamUs since 2014



- The WCMEO is the reason this law was passed: "...if the medical examiner in Laredo entered details about Joseph's remains in the database, he would have found him because he was checking regularly" - *Missing in Texas: 'John and Joseph's Law' could require police to report to NamUs*, Arezow Doost, KXAN (2021)

**5) False claims about repatriation: The WCMEO claimed that several cases that received recent genetic matches in the Humanitarian CODIS Database have already been repatriated.**

- Consulates have no record of this and claim bodies have not been returned.

**6) Unprofessional conduct: There are multiple reports from JPs, sheriff's offices, funeral homes, and consulates about unreturned phone calls, combative attitude, unwillingness to cooperate, making people wait long hours at the morgue, etc.**

- Reports from families of disrespectful conduct over the phone and being told to "not call again"

**EXHIBIT C**  
**WEBB COUNTY AG REQUEST AND BRIEF**

**WEBB COUNTY CIVIL LEGAL DIVISION**  
1000 HOUSTON ST., 2<sup>nd</sup> FLOOR  
LAREDO, TEXAS 78040



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To: Texas Attorney Generals Open Records Division  
From: Jorge L. Trevino Jr.  
Date: March 1, 2023

**Brief in Support of Withholding Information**

**Statement of Facts and Calculation of Time**

On, March 22, 2023, Webb County received an open records request form the requester identified as Exhibit 1. Which states in relevant part,

- *A copy of all autopsy reports maintained* by the Webb County Medical Examiner's Office that were conducted on behalf of the following counties from [January 1, 2020 to December 31, 2020]: Dimmitt, Maverick, Starr and Val Verde.

- *A copy of all communications concerning requests for autopsies submitted* to the Webb County Medical Examiner's Office from Dimmitt, Maverick, Starr and Val Verde counties from [January 1, 2020 to December 31, 2020].

Webb County responded to the requester identified as Exhibit 2.

On or about April 11, 2023 Webb County received a conformation to extend the deadline in order to send out for AG opinion. EX 3 PDF of Email communication.

**Factual background**

Please note that this opinion and ruling is being sought to obtain a ruling that the County can rely on for all future requests that rules "Autopsy's ordered by an out-of-town Justice of the Peace are Judicial

Records and not subject to the Texas Public Information act.” Webb County all seeks that the ruling include language that “The Order by the JP to perform an Autopsy, toxicology and any Anthropology report are also judicial records.”

## I.

### RELEVANT LAW

#### **Texas Government Code and Texas Public Information Handbook, 2022 ed.:**

1. Tex. Att’y Gen. Op. OR2011-12059 (2011): No affidavit required since the government is not required to create documents.
2. Section 552.003(1)(B)(i) of the Government Code excludes the judiciary from the Public Information Act. Section 552.0035 of the Government Code specifically provides that access to judicial records is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.<sup>30</sup> (See Part Six of this Handbook for Rule 12 of the Texas Rules of Judicial Administration.) This provision, however, expressly provides that it does not address whether particular records are judicial records. *See* TPIAH, 2022 ed. Pg 12, Section F. Judiciary Excluded from the Public Information Act.

## II.

### ARGUMENTS BASED ON AUTHORITIES

The Medical Examiner performs autopsies for neighboring communities’ base on the orders of a Justice of the Peace. Pursuant to Tex. Atty. Gen. Op. OR2017-13650 it states in relevant part:

“You state the medical examiner’s office performs autopsies for smaller surrounding counties. You state, and provide documentation showing, the autopsy at issue was performed by the medical examiner’s office pursuant to an order by the Williamson County Justice of the Peace, Precinct 4 (the “justice of the peace”) as part of a judicial inquest into the death of the named individual. See Crim. Proc. Code arts. §§ 49.04 (requiring justice of the peace to conduct inquest in certain circumstances), .10 (listing circumstances in which autopsy shall be performed), .15(a) (requiring inquest record to be maintained in office of justice of the peace), .15(b)(8) (requiring that inquest record include autopsy report); see also *id.* arts. §§ 49.01-24 (providing for duties of justice of the peace with

regard to inquests and autopsies); Attorney General Opinion GA-0389 (2005). You explain the submitted information is not a record of the medical examiner's office but is held as a judicial inquest record for the justice of the peace. Thus, the instant request is for information maintained on behalf of the justice of the peace.

We note the Act does not govern access to judicial records. See Gov't Code § 552.003(1)(B) (providing that the term “[governmental body] ... does not include the judiciary”). “Access to information collected, assembled, or maintained by ... the judiciary is governed by rules adopted by the Texas Supreme Court or by other applicable laws and rules.” Id. § 552.0035(a). Information collected, assembled, or maintained for the judiciary by an agent of the judiciary is not subject to the Act. Id.; see Open Records Decision No. 513 at 2 (1988) (“When an individual or entity acts at the direction of a grand jury as the grand jury’s agent, information held or collected by the agent is within the grand jury’s constructive possession.”). Because a justice of the peace is a member of the judiciary, the records that a justice of the peace maintains are not subject to the Act. See Tex. Const. art. V, § 1; Open Records Decision No. 25 (1974). Therefore, the Act “neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed.” ORD 25 at 3 (construing statutory predecessor). In performing the autopsy at issue, the medical examiner’s office was acting as the agent of the justice of the peace who ordered the autopsy, and thus, the requested autopsy records are collected and maintained by the medical examiner’s office on behalf of the justice of the peace. Accordingly, we find the submitted information is in the constructive possession of the justice of the peace, is consequently not subject to the Act, and need not be released in response to the instant request for information.”

A sample of the documents that are relevant to the request are attached at EX 4-8. These documents are created by the ME as part of the Order issued by the JP (EX 5 and 8) and as such an Autopsy is created for the JP along with a request for any lab work that would be relevant to the Autopsy (EX 6). The County at times may send out for an Anthropology report if the ME determines it necessary in order to complete her Autopsy Report (EX 7). The Autopsy is then sent to the JP is sent with a cover letter to close out the case (EX 4).

Therefore, the County is in the same position as the AG Opinion cited above and believes that it cannot provide judicial records which include EX 4-8 unless directed to do so by the Texas Attorney General's Office.

### **III.**

#### **PRAYER**

Based on the above arguments Webb County respectfully requests that the Judicial Records be withheld from the public disclosure based on the attorney general opinions cited above.

Respectfully,

*/s/ Jorge L. Trevino, Jr.*

Jorge L. Trevino, Jr.  
Assistant Civil Legal Division Attorney  
Texas Bar #24046994  
JorgeLT@webbcountytexas.gov

**EXHIBIT D**  
**GARCÍA PUBLIC COMMENT**



# Cornell Law School

**Heather E. Murray**

*Managing Attorney, Local Journalism Project*  
Cornell Law School First Amendment Clinic  
Myron Taylor Hall  
Ithaca, New York 14853  
Phone: (607) 255-8518  
E-mail: hem58@cornell.edu

May 16, 2023

Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
300 W. 15<sup>th</sup> Street  
Austin, TX 78701

**VIA FedEx**

***Re: Open Records Ruling Request – Webb County Autopsy Records***

Dear Attorney General Paxton:

The First Amendment Clinics at Cornell Law School and SMU Dedman School of Law write on behalf of our client, journalist Michelle Garcia, who requested autopsy records under the Texas Public Information Act (the “PIA”) from the Webb County Medical Examiner’s Office (“WCMEO”) on March 22, 2023. Ms. Garcia sought the following:

1. A copy of all autopsy reports maintained by the Webb County Medical Examiner’s Office that were conducted on behalf of the following counties from January 1, 2020 to December 31, 2020: Dimmitt, Maverick, Starr and Val Verde.
2. A copy of all communications concerning requests for autopsies submitted to the Webb County Medical Examiner’s Office from Dimmitt, Maverick, Starr and Val Verde counties from January 1, 2020 to December 31, 2020.

A copy of the request is attached as Ex. A.

In response, Webb County submitted a request for a ruling from the Office of the Attorney General on May 1, 2023. A copy of Webb County’s request is attached as Ex. B. Webb County seeks to withhold the autopsy records, claiming that records created by a medical examiner on behalf of “an out-of-town Justice of the Peace are judicial records and not subject to the Texas Public Information act.” *See* Ex. B, Letter Br. at 1-2 (citing OR2017-13650 (Jun. 20, 2017) and Gov’t Code § 552.0035). The County also claims that “an Order by the JP to perform an Autopsy, toxicology and any Anthropology report are also judicial records.” *See id.* at 2.





Webb County relies on a 2017 informal ruling finding that autopsy reports created by a medical examiner for an out-of-county justice of the peace are “in the constructive possession of the justice of the peace” and “consequently not subject to the Act[.]” *See* Ex. B, Letter Br. at 3 (quoting OR2017-13650 (Jun. 20, 2017)). But your office has previously repeatedly held the opposite—that autopsy reports created by medical examiners at the request of justices of the peace are indeed subject to the PIA. *See, e.g.*, ORD-021 at 2–3 (Jan. 25, 1974); OR2001-0845 at 3–4 (Mar. 5, 2001). The Attorney General should resolve this split in authority between earlier decisions and more recent rulings by ruling in Ms. Garcia’s favor. Autopsy reports created by the medical examiner are public records required to be maintained under state statute and the applicable retention schedule and thus cannot be withheld. *See* TEX. CRIM. PROC. CODE ANN. art. 49.25, §11; Tex. State Library and Archives Commission, Local Schedule PS, Retention Schedule for Records of Public Safety Agencies (2019), [https://www.tsl.texas.gov/slrml/localretention/schedule\\_ps#part3](https://www.tsl.texas.gov/slrml/localretention/schedule_ps#part3). Withholding the requested records also violates the First Amendment, common law and state constitutional rights of access, preventing journalists from carrying out their role of keeping the public informed of the public affairs that impact their communities.

Webb County’s additional claim that “an Order by the JP to perform an Autopsy, toxicology and any Anthropology report are also judicial records” that can be withheld is not supported by the authority it relies on and should be disregarded. Records related to government contracting, even when they are held by private entities, are subject to the PIA. *See, e.g.*, GOV’T CODE §§ 552.371-552.376. Communications like those requested here related to *intergovernmental* contracting for the provision of autopsies and related services are indisputably subject to the PIA and must be released.

**I. The Requested Autopsy Records Must Be Disclosed Because They are Public Records Created by the Medical Examiner and Required to Be Maintained by State Statute and the Applicable Retention Schedule.**

*A. Autopsy Records Prepared by a Medical Examiner on Behalf of a Justice of the Peace are Public Records Open to Public Inspection.*

Ms. Garcia requested autopsy reports written, produced, collected, assembled, and maintained by the WCMEO for justices of the peace from Dimmitt, Maverick, Starr, and Val Verde Counties. There is no dispute that “autopsy reports prepared by a medical examiner are expressly public.” *See* OR2002-0868 at 2 (Feb. 25, 2002). Because the WCMEO created and maintains these reports under art. 49.25, section 11, of the Code of Criminal Procedure and the applicable retention schedule, these records are subject to disclosure under the PIA and must be produced. *See* Tex. State Library and Archives Commission, Local Schedule PS, Retention Schedule for Records of

Public Safety Agencies (2019), [https://www.tsl.texas.gov/slrml/localretention/schedule\\_ps#part3](https://www.tsl.texas.gov/slrml/localretention/schedule_ps#part3) (requiring retention of “[o]riginals or copies of reports of autopsies performed for other counties on a fee basis, including any associated photographs, tissue slides, and laboratory reports” for five years).

Webb County’s reliance on a recent Attorney General ruling, *see supra* at 1-2, ignores that nearly 50 years ago, in one of its earliest Open Records Decisions, the Attorney General determined that “[a]n autopsy performed either by *or for* a justice of the peace in the course of an inquest or by a medical examiner in determining the cause of death is a public record and subject to disclosure.” ORD-021 at 3 (Jan. 25, 1974) (emphasis added). And, in an analogous matter in 2001, the Attorney General ruled that the City of Paris must produce a copy of an autopsy report created by the Dallas Medical Examiner *on behalf of* a Justice of the Peace. *See* OR2001-0845 at 1, 3 (Mar. 5, 2001). The Attorney General reasoned that it would lead to an “absurd result” if autopsy records maintained by justices of the peace were closed to public inspection while records maintained by the medical examiner were, in turn, open, especially given that “the legislature has with clear intent made records of justices of the peace open to public inspection.” *See id.*

In more recent years, that absurd result has gained traction as agencies have increasingly sought—and have been permitted—to withhold out-of-county autopsy records by claiming they are judicial records not subject to the PIA. While the Office of the Attorney General to our knowledge never explicitly overruled its prior precedent, recent letter rulings like the one relied on by Webb County here allow agencies to withhold out-of-county autopsy reports as purportedly not subject to the PIA. *See, e.g.,* OR2017-13650 (Jun. 20, 2017); OR2015-17939 (Aug. 27, 2015). The Attorney General should resolve this split in authority between earlier decisions and more recent rulings by ruling in Ms. Garcia’s favor that these records are indeed subject to the PIA.

*B. Section 552.0035 of the PIA Does Not Allow the Out-of-County Autopsy Records to Be Withheld Because They Were Written and Produced by Webb County.*

Webb County relies on Section 552.0035 of the Government Code to withhold out-of-county autopsy records because they purportedly are records that are “collected, assembled or maintained for the judiciary by an agent of the judiciary” and thus “not subject to the Act.” Ex. B, Letter Br. at 3 (quoting OR2017-13650 (Jun. 20, 2017)). But the out-of-county autopsy records are not merely collected, assembled, or maintained for the judiciary. These records are *created* by the WCMEO and thus expressly fall within the definition of public information subject to the PIA because they are “written” and “produced” by the WCMEO. GOV’T CODE § 552.002(a) (defining “public information” as “information that is written, produced, collected, assembled, or maintained”).

This conclusion is informed by the *expressio unius* canon of statutory construction, establishing that “the expression of one implies the exclusion of others.” *Mid-Century Ins. Co. of Texas v. Kidd*, 997 S.W.2d 265, 273 (Tex. 1999). Indeed, “every word excluded from a statute must . . . be presumed to have been excluded for a purpose.” *State v. Broaddus*, 952 S.W.2d 598, 601 (Tex. App. 1997), rev’d, 3 S.W.3d 919 (Tex. Crim. App. 1999) (citation omitted). “It follows, then, that “[w]hen the Legislature employs a term in one section of a statute and excludes it in another section, the term should not be implied where excluded.” *City of Richardson v. Oncor Elec. Delivery Co.*, 539 S.W.3d 252, 261 (Tex. 2018) (citation omitted).

Here, the legislature explicitly excluded information “written” or “produced” by a governmental body from the types of information that could be deemed judicial records not subject to the PIA. *Compare* GOV’T CODE § 552.002(a) (defining “public information” subject to the PIA as “information that is written, produced, collected, assembled, or maintained” by a governmental body) *with* GOV’T CODE § 552.0035 (providing that information “collected, assembled, or maintained by or for the judiciary” is a judicial record not subject to the PIA). And for good reason, since it flouts the spirit and the intent of the PIA to allow information that is written, produced, or otherwise created by a governmental body to be shielded from public disclosure. Because the WCMEO created these autopsy records, they fall within the PIA’s definition of “public information” and therefore must be produced by Webb County.

## **II. Even if the Requested Autopsy Reports are Judicial Records, the First Amendment and the Common Law Rights of Access Require Disclosure.**

Webb County argues that autopsy reports created in response to requests by justices of the peace are exempt from disclosure because the resulting autopsy records are judicial records not covered by the PIA. However, the fact that these autopsy records may also qualify as judicial records only lends additional support for their release here.

Under the First Amendment and the common law right of access, courts around the country have extended a right of access to judicial records, other records, and proceedings. *See, e.g., United States v. Sealed Search Warrants*, 868 F.3d 385, 390 (5th Cir. 2017). The Fifth Circuit has characterized the “public’s right of access to judicial records [as] a fundamental element of the rule of law.” *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417 (5th Cir. 2021). Further, Rule 12.1 of the Texas Rules of Judicial Administration “provide[s] public access to information in the judiciary” in accordance with “mandates of the Texas Constitution,” and establishes that “[t]he rule should be liberally construed to achieve its purpose.” TEX. R. JUD. ADMIN. 12.1. Therefore, even if the autopsy records are found to be purely judicial records, the WCMEO should still release them. Webb County’s position, if accepted, means that records of all autopsies performed by WCMEO for a Justice of the Peace are only available to the public through individual requests to

each Justice of the Peace. However, nothing in the PIA prohibits WCMEO from releasing the indisputably public records in its custody.

A. *Courts Have Extended the First Amendment Right of Access Beyond Judicial Proceedings to Administrative Proceedings and Records.*

Courts have extended the First Amendment right of access not only to various types of court records, but also to documents that are similar to the ones at issue here. Courts analyze whether the First Amendment right of access applies to records via a two-part test. *See Press-Enter. Co. v. Superior Ct. of California for Riverside Cnty.* (“Press Enterprise II”), 478 U.S. 1, 8-9 (1986). The “experience” prong examines “whether the place and process have historically been open to the press and general public,” and the “logic” prong examines “whether public access plays a significant positive role in the functioning of the particular process in question.” *Id.* A presumption of access “may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.*

In a closely analogous case, the Ninth Circuit found that there was a serious constitutional question regarding a First Amendment right of access claim to voter lists maintained by the U.S. Department of Agriculture. *Cal-Almond, Inc. v. U.S. Department of Agriculture*, 960 F.2d 105, 107, 109 (9th Cir. 1992). While the Ninth Circuit invoked the constitutional avoidance doctrine to release the records on other grounds, the court’s analysis demonstrated that the First Amendment right of access would otherwise have applied to the agency’s records due to the “significant positive role” of public access to voter lists. *Id.* at 109, 110; *see also Whiteland Woods v. West Whiteland*, 193 F.3d 177, 180–81 (3d Cir. 1999) (extending the First Amendment right of access to township planning commission meetings by finding that openness played a significant role in fostering “[p]ublic awareness of land use matters and the perception of fairness”).

Here, application of the *Press Enterprise II* two-part test supports a finding that the autopsy reports are presumptively open to the public. The experience prong requires courts to (a) examine whether a proceeding or type of record has been open to the public *nationwide*, including in surrounding municipalities, *Sullo & Bobbitt, P.L.L.C. v. Milner*, 765 F.3d 388, 393–94 (5th Cir. 2014) (internal citation omitted); and (b) explore legal and non-legal sources from different eras. *See, e.g., In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 178 (5th Cir. 2011) (examining history of openness by referencing newspaper articles dating as far back as 1931). Like the *Cal-Almond* court, which examined pertinent statutes from multiple states, the Fifth Circuit would explore the practices of other counties and states to determine the history of openness of autopsy records. *Cal-Almond*, 960 F.2d at 109.

Autopsy records have historically been open to the public throughout the United States. Jeffrey R. Boles, *Documenting Death: Public Access to Government Death Records and Attendant Privacy Concerns*, 22 CORNELL J.L. & PUB. POL'Y 237, 240, 280 (2012). In 1974, only months after the enactment of the PIA, the Texas Attorney General found that autopsy reports prepared by a medical examiner are public records and must be released, even if the autopsy was performed for a justice of the peace. *See* ORD-021 at 3 (1974).

Likewise, many other jurisdictions routinely release autopsy reports and coroner's records. Oklahoma, for example, makes autopsy reports available to the public and provides a "complimentary copy" to media outlets that request them, *see* OKLA. STAT. ANN. tit. 63, § 937; OKLAHOMA OFFICE OF THE CHIEF MEDICAL EXAMINER, <https://oklahoma.gov/ocme/case-information.html> (last visited Mar. 13, 2023). Likewise, in New Mexico, autopsy reports are a matter of public record. *See* THE UNIVERSITY OF NEW MEXICO'S OFFICE OF THE MEDICAL INVESTIGATOR, *Autopsies*, <https://hsc.unm.edu/omi/about/faq/autopsies.html> (last visited Mar. 13, 2023).

The logic prong of the *Press Enterprise II* two-part test examines "whether public access plays a significant positive role in the functioning of the particular process in question," and favors disclosure of the autopsy reports. *Press-Enter. Co.*, 478 U.S. at 8. Public access plays a positive role when openness "enhances both the basic fairness . . . and the appearance of fairness so essential to public confidence in the system." *Id.* at 9. In Texas, where only 14 of 254 counties have a Medical Examiner's office, and death investigations are "highly fragmented and lacking in resources or oversight," releasing autopsy records would aid in the proper functioning of the system and develop public confidence that is currently lacking. *See* Molly Kaplan and M. Katherine Spradley, *Lost in Plain Sight: How Current Burial Practices Impact Migrant Death Investigation in South Texas*, 46 *Annals of Anthropological Practice* 122, 123, available at <https://doi.org/10.1111/napa.12189> (noting that the Forensic Anthropology Center at Texas State University has encountered issues, including "missing or insufficient case documentation" when attempting to recover the remains of unidentified migrants to conduct forensic analyses); Center for Health Journalism, Cary Aspinwall, *Why is Texas keeping deaths a secret?* (July 8, 2008), <https://centerforhealthjournalism.org/2018/06/28/why-texas-keeping-deaths-secret> (finding that "at least 10 drug-related cases [of deaths of incarcerated women in Texas] . . . were labeled incorrectly" as accidents, suicides or natural causes).

Additionally, openness "soothes the community sorrow," *Society of Professional Journalists v. Secretary of Labor*, 616 F. Supp. 569, 576 (D. Utah 1985), 832 F.2d 1180 (10th Cir. 1987), and ensures that the government is performing statutorily required autopsies and recordkeeping as mandated by law. Access to autopsy reports will allow journalists to report on

the number of investigated deaths and analyze causes of death, while allowing Texan communities to hold public officials involved in the state's system of death investigations accountable.

*B. The Common Law Right of Access Favors Disclosure of Autopsy Records.*

In addition to the First Amendment right of access, courts recognize a common law right of access to judicial records. *See United States v. Sealed Search Warrants*, 868 F.3d 385, 390 (5th Cir. 2017); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589 (1978). Under this doctrine, the Fifth Circuit assesses requests for access “on a case-by-case basis by balancing the public’s right of access with interests favoring nondisclosure.” *Sealed Search Warrants*, 868 F.3d at 388.

As Webb County has conceded, the requested autopsy reports are subject to the common law right of access because any “record made or maintained by or for a . . . judicial agency in its regular course of business” is a judicial record, and these records “are open to the general public for inspection and copying during regular business hours.” TEX. R. JUD. ADMIN. 12.2(d), 12.4(a); *Binh Hoa Le*, 990 F.3d at 416. After determining whether the documents are judicial records, the court balances “the public’s right of access with interests favoring nondisclosure.” *Sealed Search Warrants*, 868 F.3d at 388. Here, Webb County cannot identify any specific harm created by the disclosure, especially because medical examiners and justices of the peace frequently release autopsy reports as a matter of public record. *Cf. Vantage Health Plan v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 451 (5th Cir. 2019) (affirming denial of motion to seal discovery documents because the party requesting seal “could not articulate any specific harm created by the disclosure [and] offered nothing but conclusory statements to support a blanket claim of confidentiality”). The records should thus be disclosed because they are subject to the First Amendment and common law rights of access.

**III. The Autopsy Records Must Be Released to Avoid Violating the State Constitutional Right of Access.**

The requested autopsy records should also be disclosed under the state constitutional right of access. The state constitutional right of access is derived from both the U.S. Constitution and the Texas Constitution. *See Houston Chron. Pub. Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). The constitutional right of access applies to provide the press and the public “access to information concerning crime in the community, and to information relating to activities of law enforcement agencies.” *Id.* at 186. The right of free public discussion of the stewardship of public officials is a fundamental principle of the American form of government. *Id.* at 188. Further, newsworthy concerns may justify the invasion of the lives of private citizens. *Id.*

To determine the applicability of the constitutional right of access, the *Houston Chronicle* court “weigh[ed] and evaluate[d] legitimate competing interests,” which in that case included the “people’s right to know,” preserving secrecy within the adversary system, and preventing due-process violations through excessive publicity. *Id.* While the court noted another interest was “[t]he expense and manpower necessary for the maintenance of appropriate records,” it deemed that interest “relatively insignificant considering the importance of the matters at issue here.” *Id.*

Here, the state constitutional right of access attaches to the requested autopsy records because they are related to crime in the community. Ms. Garcia has requested these autopsy records to report on the deaths of migrants along the border. Through this reporting, she aims to investigate a gap in information about migrant deaths—the identities of whom are often not known—and to examine the adequacy of government agency responses to these deaths. Autopsy reports can also help “satisfy the public’s interest in knowing the cause of death, particularly when the death was reported in the local media[,]” “determin[e] whether to file an action for wrongful death[,]” and “provide answers to grieving family members” and the community at large. *People v. Dungo*, 286 P.3d 442, 450 (Cal. 2012), *as modified on denial of reh’g* (Dec. 12, 2012).

The “people’s right to know” about migrant deaths occurring in Texas outweighs any purported concern about due process violations through publicity. *Houston Chron. Pub. Co.*, 531 S.W.2d at 188. Any due process concerns regarding the release of migrant death autopsies here are inherently speculative and pale in comparison to the concerns raised in *Houston Chronicle*, where there was a “potential for massive and unjustified damage to the individual” if the criminal history and arrest records were released. *Id.* The records should thus be disclosed because they are subject to the state constitutional right of access.

#### **IV. Section 552.0035(a) Must Be Construed to Avoid Violating the Federal and State Constitutional Rights of Access.**

The Office of the Attorney General should construe Gov. Code § 552.0035(a) in a way that avoids violating Ms. Garcia’s First Amendment and state constitutional rights of access. The canon of constitutional avoidance is a “cardinal principle.” *Jennings v. Rodriguez*, 138 S. Ct. 31, 830, 842 (2018) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). Under this canon of interpretation, “when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems.” *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 924-25 (W.D. Tex. 2018). Such a construction is possible when it is not “plainly contrary to the intent of [the legislature].” *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Trades Council*, 485 U.S. 568, 575 (1988). A court should not find that the legislature intended to enact a statute of

doubtful validity unless such intent is “unmistakabl[e].” *Panama R. Co. v. Johnson*, 264 U.S. 375, 390 (1924).

While Webb County relies on Section 552.0035(a) of the Government Code argue that the records are judicial documents not subject to the PIA, as explained in Section I.B above, Section 552.0035(a) is inapplicable because it simply does not apply to public information that is written or produced by a governmental body. *Compare* GOV’T CODE § 552.002(a) (defining “public information” subject to the PIA as “information that is written, produced, collected, assembled, or maintained” by a governmental body) *with* GOV’T CODE § 552.0035 (providing that information “collected, assembled, or maintained by or for the judiciary” is a judicial record not subject to the PIA). Given that the autopsy reports are written, produced and maintained by the Medical Examiner’s Office, violations of the First Amendment and state constitutional rights of access can be avoided by following the legislature’s clear intent in deeming out-of-county autopsy records created by the WCMEO subject to the PIA. Given that the legislature—and the Attorney General—have previously clearly established that autopsy reports should be open to the public, releasing the autopsy reports under the PIA can in no way be deemed “plainly contrary to the intent of [the legislature].” *Edward J. DeBartolo Corp*, 485 U.S. at 575. The autopsy records should thus be released.

### Conclusion

For all these reasons, Ms. Garcia requests the Office of the Attorney General determine that the records at issue must be released.

Sincerely,

/s/ Peter Steffensen

Peter Steffensen  
Law Fellow  
SMU Dedman School of Law  
First Amendment Clinic

/s/ Heather E. Murray

Heather E. Murray  
Managing Attorney, Local Journalism Project  
Cornell Law School  
First Amendment Clinic<sup>1</sup>

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<sup>1</sup> Clinic students Alyse Horan and Maria Kearns-Galeano drafted portions of this public comment. The Clinic is housed within Cornell Law School and Cornell University. Nothing in this public comment should be construed to represent the views of these institutions.



**EXHIBIT E**  
**AG LETTER RULING**



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

July 12, 2023

Mr. Jorge L. Trevino, Jr.  
Assistant Civil Legal Division Attorney  
Webb County  
1000 Houston Street, 2nd Floor  
Laredo, Texas 78040

OR2023-23174

Dear Mr. Trevino:

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# 069659 (PIA# 3013).

Webb County (the "county") received a request for specified autopsy reports generated by the county's medical examiner's office (the "medical examiner's office") and communications related to requests for the specified autopsy reports. You assert the submitted information consists of records of the judiciary. We have considered your argument and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You state the medical examiner's office performs autopsies for smaller surrounding counties. You state, and provide documentation showing, the autopsies at issue were performed by the medical examiner's office pursuant to orders by Justices of the Peace from Dimmit County, Maverick County, and Val Verde County (the "justice of the peace") as part of judicial inquests into the deaths of individuals at issue. *See* Crim. Proc. Code arts. §§ 49.04 (requiring justice of the peace to conduct inquest in certain circumstances), .10 (listing circumstances in which autopsy shall be performed), .15(a) (requiring inquest record to be maintained in office of justice of the peace), .15(b)(8) (requiring that inquest record include autopsy report); *see also id.* arts. §§ 49.01-.24 (providing for duties of justice of the peace with regard to inquests and autopsies); Attorney General Opinion GA-0389 (2005). You explain the submitted information is not a record of the county or the medical examiner's office but is held as a judicial inquest record for the justices of the peace. Thus, the instant request is for information maintained on behalf of the justices of the peace.

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We note the Act does not govern access to judicial records. *See* Gov't Code § 552.003(1)(B) (providing that the term “[g]overnmental body” . . . does not include the judiciary”). “Access to information collected, assembled, or maintained by . . . the judiciary is governed by rules adopted by the Texas Supreme Court or by other applicable laws and rules.” *Id.* § 552.0035(a). Information collected, assembled, or maintained for the judiciary by an agent of the judiciary is not subject to the Act. *Id.*; *see* Open Records Decision No. 513 at 2 (1988) (“When an individual or entity acts at the direction of a grand jury as the grand jury’s agent, information held or collected by the agent is within the grand jury’s constructive possession.”). Because a justice of the peace is a member of the judiciary, the records that a justice of the peace maintains are not subject to the Act. *See* Tex. Const. art. V, § 1; Open Records Decision No. 25 (1974). Therefore, the Act “neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed.” ORD 25 at 3 (construing statutory predecessor). In performing the autopsies at issue, the medical examiner’s office was acting as the agent of the justices of the peace who ordered the autopsies, and thus, the requested records are collected and maintained by the medical examiner’s office on behalf of the justices of the peace. Accordingly, we find the submitted information is in the constructive possession of the justices of the peace, is consequently not subject to the Act, and need not be released in response to the instant request for information.

You ask this office to issue a previous determination stating that autopsy records, including orders to perform the autopsies at issue, prepared for justices of the peace from other counties are judicial records not subject to the Act. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tb

Ref: ID# 069659

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)