Records, accident scene photos

Number: INFORMAL

Date: July 27, 2007

Subject:
Records, accident scene photos

The Honorable Evelyn J. Lynn
Senator, District 7
536 North Halifax Avenue
Suite 101
Daytona Beach, Florida 32118

Dear Senator Lynn:

This is in response to your request for an opinion on behalf of a constituent as to whether photographs taken by the medical examiner's investigator at the site of an automobile accident are exempt from disclosure under Florida's Public Records Law. The medical examiner's office has advised the individual that the photographs are protected from disclosure pursuant to section 406.135, Florida Statutes.

Section 406.135(2), Florida Statutes, states:

"A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse may view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy. . . ."

For purposes of section 406.135, the term "medical examiner" includes any district medical examiner, or substitute medical examiner acting pursuant to Chapter 406, as well as any "employee, deputy, or agent of a medical examiner or any other person who may obtain possession of a photograph or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties."[1]

This office has previously addressed the question of whether the exemption in section 406.135, Florida Statutes, includes crime scene photographs, pre-autopsy photographs of the body, and post-autopsy photographs of the body that are in the custody of the medical examiner. In Attorney General Opinion 2001-47, it was concluded that since the exemption by its terms applies only to "autopsy photographs or video or audio recordings," crime scene photographs are not included within the scope of the exemption. However, it was found that the exemption would apply to photographs and recordings taken or made by the medical examiner as a part of the autopsy process, including those taken before, during, and after the medical examiner performs the actual autopsy procedure. A copy of the opinion is enclosed for your review.

I trust this will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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Enclosure

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[1] Section 406.135(1), Fla. Stat.