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May 30, 2003

The Honorable Leo E. Green
3123 Belair Drive
Bowie, Maryland 21715-3198

Dear Senator Green:

You have asked for comments on a letter from the National Coalition Acting for Autopsy Privacy (NCAAP) concerning the status of autopsy photographs under the Maryland Public Information Act. It is my view that autopsy photographs are not subject to disclosure under the Public Information Act.

The NCAAP is an organization devoted to the privacy of autopsy photographs. In their letter, they note that they have been told that autopsy photos are not available under Maryland law, but ask that you take action to bring the matter before Congress to assure the protection of citizens of Maryland regardless of their place of death. They also mention that other states have expressly exempted autopsy photographs from public information requirements, and presumably would like for Maryland to do that as well.

The Public Information Act, at State Government Article Title 10, subtitle 6, part III, recognizes a general right in the public to information about the affairs of government and the official acts of public officials and employees. SG § 10-612(a). However, there are exceptions to this general rule of availability. Among these is § 10-619(b), which states that a custodian shall deny inspection of the part of a public record that contains medical or psychological information about an individual "other than an autopsy report of a medical examiner."

Regulations governing the Office of the Chief Medical Examiner reflect this requirement. These regulations state that the "[i]ndividual files of the Chief Medical Examiner are not public records but are private medical records protected from disclosure under the provisions of State Government Article," COMAR 10.35.01.14A, but recognize the exception for the "official medical examiner's autopsy report," COMAR 10.35.01.14B. The Office of the Chief Medical Examiner has consistently taken the position that the autopsy photographs are not a part of the official autopsy report, and, as such, are not subject to disclosure under the § 10-619(b) exception for autopsy reports. This position has not been the subject of any reported decision, but has been upheld at the trial level.

I hope that this is responsive to your inquiry.

The Honorable Leo E. Green
May 30, 2003
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Sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn M. Rowe', with a stylized, cursive script.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
green19.wpd