



OLR RESEARCH REPORT

November 22, 2013

2013-R-0435

LAWS ALLOWING RECORDS TO BE INSPECTED BUT NOT COPIED

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You asked for examples of other states' laws that allow certain records (e.g., crime scene photos) to be inspected but not copied. You also want to know the (1) procedures these states use to prevent unauthorized copying of these records and (2) consequences of unauthorized copying.

SUMMARY

OLR Report 2013-R-0364, which addressed state laws governing access to crime scene photos, autopsy records, and 911 tapes and transcripts, identified four states whose laws have provisions for inspecting, but not copying, these records. They are Georgia (crime scene photos or videos), North Carolina (autopsy photos or videos), North Dakota (911 tapes), and Ohio (autopsy photos).

Public agencies in these states use varying procedures to prevent unauthorized copying of the records, such as having a staff member present when a person inspects them. Officials with whom we spoke said that they did not know of any instances of unauthorized copying of the records when inspected under these laws.

Two states (Georgia and North Carolina) have criminal penalties for unauthorized copying of the records; none of the four states' laws allow for a cause of action for unauthorized copying. A person could file a lawsuit for common law tortious invasion of privacy, but we found a North Carolina case concerning unauthorized copying and distribution of autopsy photos where the court dismissed such a claim.

STATES' LAWS

Table 1 shows the four states' laws that allow records to be inspected but not copied.

Table 1: State Statutes that Allow Records to be Inspected but not Copied

<i>State (citation)</i>	<i>Direct Limitations on Disclosure</i>
<p>Georgia (Ga. Code Ann. § 45-16-27 (e) and Ga. Comp. Rules & Regs. § 92-5-.01)</p>	<p>Georgia law restricts access to crime scene photos and videos in a state or local agency's custody that depict or describe a decedent in a state of dismemberment, decapitation, or similar mutilation, including those where the decedent's genitalia are exposed.</p> <p>Bona fide credentialed press members may view the records. The press members must agree to refrain from copying, duplicating, or distributing the materials.</p>
<p>North Carolina (N.C. Gen. Stat. §§ 132-1.8 and 130A-389.1)</p>	<p>Autopsy photos and video and audio recordings are not public records. However, any person may examine them at reasonable times and under reasonable supervision.</p>
<p>North Dakota (ND Stat. § 57-40.6-07 (4))</p>	<p>A public agency may deny access to 911 audio recordings.</p> <p>A person may listen to, but not copy or record, the audio recording upon request and may ask for a written transcript.</p>
<p>Ohio (Ohio Rev. Code §§ 313.10 and 149.43)</p>	<p>Coroner's report, including detailed descriptions and conclusions, are public records. The law exempts:</p> <ul style="list-style-type: none"> • preliminary notes and findings, • photos, • suicide notes, • medical and psychiatric records, • confidential law enforcement investigatory records, and • lab reports generated from an analysis of physical evidence. <p>The coroner must release the report, including the otherwise exempt material ("full and complete records"), at the written request of various surviving family members or next of kin.</p> <p>A journalist may submit a written request to view the coroner's preliminary investigative notes and findings, suicide notes, and photos. The request must state that granting it would serve the public's best interest. The coroner must grant the request; the journalist cannot copy the information or photos.</p> <p>A "journalist" is a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service; a radio or television station; or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.</p>

PROCEDURES TO PREVENT UNAUTHORIZED COPYING

We spoke with officials in each of the four states identified in Table 1 to learn more about their procedures for regulating the inspection of the records described in the table. None of the states establish uniform procedures concerning access to the records; agencies generally have

discretion to establish procedures as they see fit. The responses from the officials with whom we spoke are listed in Table 2, but these procedures do not necessarily apply statewide.

None of the officials with whom we spoke were aware of any instances of unauthorized copying of the records described in Table 1 when inspected under these laws.

Table 2: Procedures to Prevent Unauthorized Copying

<i>State (type of record)</i>	<i>Agency Contacted</i>	<i>Procedures</i>
Georgia (crime scene photos)	Georgia Bureau of Investigation (GBI)	A records custodian, upon receiving a written request from a journalist, must provide the journalist with immediate access to the crime scene photos or videos if they are readily available. If they are not, the custodian must, within three business days, provide either access to the records or a timetable for their viewing. The custodian must also attempt to notify the decedent's known next of kin of the request (Ga. Comp. Rules & Regs. § 92-5-.01). According to two GBI staff members with whom we spoke, a journalist generally must be accompanied by a GBI staff member when inspecting any of the bureau's records. However, they were unaware of any requests made to the bureau to view a photo or video of a deceased person under the law described in Table 1. (Georgia passed this law in 2010.)
North Carolina (autopsy photos)	Office of the Chief Medical Examiner	Access is by appointment only, and a staff member is present while the person views the photo or video. The person must leave any electronic or recording devices outside the room, but may bring in a pencil and paper to make notes about the photo or video. The office does not notify victims' families of requests to view autopsy photos or videos.
North Dakota (911 tapes)	Bismarck/Burleigh County Combined Communications Center	A staff member is present when a person listens to a 911 tape, but the agency does not require people to surrender electronic devices before listening to the tape. The official with whom we spoke noted that most requests for 911 tapes are from attorneys, and that the agency generally requires them to use the discovery process to obtain the tapes.
Ohio (autopsy photos)	Ohio State Coroners' Association	Procedures for viewing autopsy photos vary by county. For example, in some cases a staff member is present while the journalist views the photos, but in others the journalist is permitted to view them alone. Similarly, some coroners permit journalists to take notes as they view the photos, while others prohibit note-taking. The official from the coroners' association stated that journalists must make an appointment to view autopsy photos, and coroners notify a decedent's family members when such access is requested.

UNAUTHORIZED COPYING

Under Georgia law, a person who violates the Georgia Death Investigation Act is guilty of a misdemeanor (Ga. Code. Ann. § 45-16-47). Because the statute governing access to photos and videos of a decedent is part of this act, it thus appears that a person who makes unauthorized copies is guilty of a misdemeanor.

Under North Carolina law, a person who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photo or video or audio recording, with intent to steal, is guilty of a Class 1 misdemeanor (N.C. Gen. Stat. § 130A-389.1(h)).

We did not find any laws in the four states that allow for a cause of action for unauthorized copying. A person could file a lawsuit for common law tortious invasion of privacy, but we found a North Carolina case concerning unauthorized distribution of autopsy photos where the court dismissed such a claim.

North Carolina Case

In 2011, the North Carolina Court of Appeals held that viewing and distributing autopsy photos is not a tortious invasion of privacy (*Tillet v. Onslow Memorial Hospital*, 715 S.E.2d 538 (2011)). The case involved an autopsy performed by a pathology firm in which the firm's employees published and disclosed the autopsy photos to third parties. The victim's family filed a lawsuit alleging a common law tortious invasion of privacy. The trial court granted the defendants' motion to dismiss the lawsuit.

In upholding the dismissal, the appellate court ruled that the family members did not have a privacy interest in the photos for the purposes of the invasion of privacy tort. The court noted that North Carolina law allows any person to view autopsy photos, with the only restriction being that the viewing must occur at a reasonable time and under reasonable supervision. The court cited the Restatement (Second) of Torts, which states that "there is no liability for the examination of a public record concerning the plaintiff, or of documents that the plaintiff is required to keep and make available for public inspection" (Restatement (Second) of Torts § 652B, cmt. c.).

Since the autopsy photos must be available for public inspection, the court ruled that (1) they cannot be considered private for the purposes of the tort and (2) the plaintiffs thus failed to state a claim for invasion of privacy. It also noted that, to the extent the employees violated the law, they are liable only criminally, not civilly.

TA:ts