



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2003

Ms. Larissa T. Roeder
Assistant District Attorney
Frankl Crowley Court's Building
133 North Industrial Blvd., LB-19
Dallas County, Texas 75207-4399

OR2003-6809

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188480.

The Dallas County District Attorney's Office (the "DA") received a request for copies of autopsies in which the deceased died or likely died due to overdoses from any of, or a combination of, Methadone, OxyContin, Hydrocodone, or Oxycodone. The requestor also seeks copies of autopsies in which the deceased had large amounts of such drugs in their systems. You state that the requested information is outside the scope of the Public Information Act (the "Act"). In the alternative, you claim that the requested information, or portions thereof, is exempted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample information.¹

Initially, we will address your contention that the requested information is outside the scope of the Act. The Act does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989).

¹We assume that the "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 that those records contain substantially different types of information than that submitted to this office.

You state that the Medical Examiner's Office "does not maintain or compile the requested information according to the stated criteria." You further state that "compliance with this request would require the Medical Examiner's Office to perform research, apply the requestor's criteria to potentially related documents, and then compile new information in response to this request." The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with predecessor of Act does not determine availability of information); Open Records Decision No. 497 (1988). A governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision No. 561 at 8 (1990).

We note that section 552.231 of the Government Code sets out the procedures a governmental body must follow if responding to a request for information would require programming or manipulation of data.² See Gov't Code § 552.231 (providing procedures for governmental body to respond to requestor if manipulation of requested information is not feasible, will result in substantial interference with ongoing operations, or will result in costs to cover manipulation of information). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation under the Act to provide the requested information to the requestor or seek a ruling from this office as to whether the information is excepted from disclosure. See *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W. 3d 678, 682 (Tex. App. - Eastland 2000, *pet. denied*). Thus, a governmental body's officer for public information carries the duty of promptly producing such information to a requestor when it is requested, unless it wishes to withhold the information from disclosure. See Gov't Code §§ 552.203, 221. Because you have submitted information responsive to the present request, we will address your claims that the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), 301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information is "directly related to an active criminal investigation being jointly conducted by this office, the Drug Enforcement

²We note that the term "manipulation" is defined by the Act as the "process of modifying, rendering, or decoding of information with human intervention." Gov't Code § 552.003(2).

Administration, the Federal Bureau of Investigation, the Texas Attorney General's Office, the Dallas Police Department, and the Health and Human Services Office of the Inspector General." You further state that release of the requested information "could prematurely disclose investigative and evidentiary information to not just the requestor, but also suspects currently under criminal investigation." Finally, you state that "premature release of information related to this investigation could . . . taint potential witnesses," and "to release the requested autopsy reports en mass would limit this office's ability to identify, evaluate, and cultivate evidence necessary for prosecution in a criminal trial." Based on these representations, we conclude that the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we conclude the DA may withhold the requested information under section 552.108. As our ruling is dispositive, we do not address your claim under section 552.103.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 188480

Enc. Submitted documents

c: Mr. Mark Smith
WFAA-TV, Channel 8
606 Young Street
Dallas, Texas 75202-4870
(w/o enclosures)