



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2003

Ms. Larissa T. Roeder
Assistant District Attorney
County of Dallas
133 North Industrial Blvd., LB-19
Dallas County, Texas 75207-4399

OR2003-6942

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# 188772.

The Dallas County Medical Examiner's Office (the "M.E.'s Office") received a request for copies of autopsy and toxicology reports on seventeen identified individuals. You state that the M.E.'s Office does not possess autopsy/toxicology reports on four of the identified individuals.¹ You also inform us that one of the requested reports will be released because it has previously been made available to the public. You claim that portions of the remaining requested reports are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing for submission of public comments).

Initially, we note, and you acknowledge, that eleven of the remaining requested reports have previously been ruled upon by this office. In Open Records Letter No. 2003-5878 (2003), this office determined that the M.E.'s Office could withhold the marked information in the eleven submitted reports pursuant to section 552.108(a)(1) of the Government Code. As the facts and circumstances surrounding that ruling do not appear to have changed, the M.E.'s

¹The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Office may continue to withhold those portions of the autopsy/toxicology reports in accordance with our previous ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).² As those eleven reports have previously been ruled upon, we only address the public nature of the remaining report.

Section 552.108(a) 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.” The M.E.’s Office is not a “law enforcement agency” for purposes of section 552.108. *See* Open Records Decision No. 199 (1978) (predecessor statute). However, a non-law-enforcement agency may withhold information under section 552.108 if the information relates to possible criminal conduct and has been or will be forwarded to an appropriate law enforcement agency for investigation. *See* Attorney General Opinion MW-575 (1982), Open Records Decision No. 493 (1988); *see also* Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident). A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that “release of the identified information would interfere with the active criminal investigation being jointly conducted by [the DA], the Drug Enforcement 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.” Based on this representations and our review of the submitted information, we conclude that the M.E.’s Office may withhold the marked information in the reports pursuant to section 552.108(a)(1). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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). Because we base our ruling on section 552.108, we need not address your argument under section 552.103 of the Government Code.

²The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the “Act”); and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

To summarize, we conclude that: (1) the M.E.'s Office must withhold those portions of the eleven previously submitted autopsy reports ruled on in Open Records Letter No. 2003-5878 (2003), and (2) the M.E.'s Office may withhold the remaining information you seek to withhold under section 552.108(a)(1) of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Sarah Swanson", written in a cursive style.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 188772

Enc. Submitted documents

c: Ms. Sandy Soule
Soule's Investigative Services
P. O. Box 59322
Dallas, Texas 75229
(w/o enclosures)