



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2003

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

OR2003-7071

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# 188915.

The Dallas County Medical Examiner's Office (the "M.E.'s Office") received a request for copies of all autopsy and toxicology reports that have been queried by the Dallas County District Attorney's Office (the "DA") referencing their investigation of Dr. Daniel Maynard. The DA has submitted briefing to this office on behalf of the M.E.'s Office and the DA. You claim that the requested information is 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.¹

Initially, we address your contention that the requestor is "in essence asking [the M.E.'s Office] to perform research and generate new information." This office has stated on numerous occasions that the Public Information Act (the "Act") does not require governmental bodies to answer factual questions or perform legal research. *See, e.g.,* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must only make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990). 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

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.

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). As you have submitted responsive information, we now turn to your claimed exceptions for this information.

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 the requested information is directly related to an 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. You further state that “premature public release of the requested information would interfere with [the DA’s] ability to investigate, detect, and prosecute crime.” Based on these representations and our review, we conclude that the M.E.’s Office may withhold the requested information pursuant to section 552.108(a)(1). See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d177,186-87 (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.

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# 188915

Enc. Submitted documents

c: Ms. Sandy Soule
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(w/o enclosures)