



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2005

Ms. Amy M. Columbus
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2005-06243

Dear Ms. Columbus:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 228095.

The Southwestern Institute of Forensic Sciences ("SWIFS") received a request for information related to the death of a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state that a portion of the requested information was the subject of a previous ruling from this office. In Open Records Letter No. 2005-2200 (2005), we concluded that the submitted information was excepted from disclosure under section 552.108 of the Government Code. Therefore, as you represent that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, SWIFS should continue to rely on Open Records Letter No. 2005-2200 regarding the information that was the subject of the previous ruling.¹ See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

¹The 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 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).

Section 552.108(a) of the Government Code provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if “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 demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov’t Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the remaining responsive information relates to pending prosecutions in four cases. You also state that the Dallas County District Attorney asks that the information not be released to the requestor. Based on your representations and our review of the submitted information, we find that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a); *see* Open Records Decision Nos. 372 at 4 (1983) (stating that where incident involving criminal conduct remains under active investigation or prosecution, “law-enforcement exception” may be invoked by any proper custodian of related information), 493 at 2 (1988), 272 (1981); *see also* Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor). Accordingly, we conclude that SWIFS may withhold the remaining submitted information from disclosure pursuant to section 552.108 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll

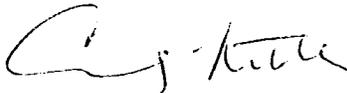
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Tex. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 228095

Enc. Submitted documents

c: Ms. Nadia Harrison
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Houston, Texas 77007-7606
(w/o enclosures)