



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2006-08984

Dear Ms. Joe:

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# 256622.

The Travis County Medical Examiner (the "medical examiner") received a request for all shipping receipts and chain-of-command documents related to the receipt of brain slides of a named individual by the medical examiner. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-07588 (2006). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the medical examiner must continue to rely on Open Records Letter No. 2006-07588 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We must next address the requestor's assertion that the medical examiner did not comply with the procedural requirements of section 552.301(d) of the Government Code. Section 552.301(d) requires a governmental body to provide the following to the requestor within ten business days of receiving the request for information: (1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision about whether the information is within an exception to public disclosure and (2) a copy or redacted copy of the governmental body's written communication to the attorney general asking for a decision. The requestor asserts that he was not provided notice of the medical examiner's request for a decision from this office within the ten-business-day time period mandated under section 552.301(d); however, the medical examiner's initial request for a decision to this office, which was timely submitted, indicates that the requestor was sent a copy of the request for a decision. As the requestor has provided no documentation to the contrary, we determine that the requestor has not established that the medical examiner violated the procedural requirements of section 552.301(d).

You assert that the submitted information is excepted under section 552.107 of the Government Code. Section 552.107(2) excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." You have provided documentation showing that Justice of the Peace Hernandez, Precinct 1, Place 2 of Hays County, has issued orders prohibiting the medical examiner from releasing anything to the public regarding the individual at issue, except for an autopsy report. You also assert that the submitted document pertains to the individual named in the court orders. Based on these representations and our review of the information at issue, we conclude that the medical examiner must withhold the submitted information pursuant to section 552.107(2) 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

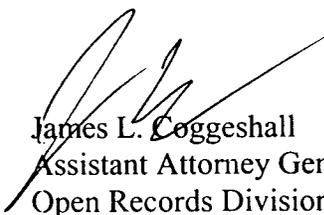
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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); *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 Office of the Attorney General 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 256622

Enc. Submitted documents

c: Mr. David Fisher
605 North Hwy 95
Elgin, Texas 78621
(w/o enclosures)