



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2007

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

OR2007-01471

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# 270817.

The Travis County Medical Examiner's Office (the "medical examiner") received a request for the autopsy reports of nine named individuals. You state that you will release a portion of the requested information.¹ You claim that the submitted 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.

Initially, you inform us that some of the requested information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2007-00981 (2007) and 2007-00656 (2007). With regard to information in the current request that is identical to the information previously requested and ruled upon by

¹We note that, with the exception of the autopsy reports of three of the named individuals, for which you have requested rulings from this office, you state that you do not object to the release of the remaining requested information. As you have not submitted the remaining information for our review, we assume you have released it to the extent that it existed at the time this request was received. If you have not released any such records, you must release them to the requestor at this time. *See id.* §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the medical examiner must continue to rely on the rulings as previous determinations and withhold or release this information in accordance with Open Records Letter Nos. 2007-00981 and 2007-00656. *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).

Section 552.108 of the Government Code excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). When a non-law enforcement agency has custody of information that would otherwise qualify for exception as information relating to the pending case of a law enforcement agency under section 552.108, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform us that the Austin Police Department objects to the release of the submitted information because its release would interfere with an active criminal investigation. Based upon this representation, we conclude that the release of this 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). Accordingly, we conclude that the medical examiner may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note that you ask if an interagency transfer would be allowed in this instance. This office ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Act, as the Act is concerned with the required release of information to the *public*. Gov’t Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But*

see Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has concluded that information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). Thus, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information. *See* Open Records Decision No. 655 at 8. In this instance, however, neither you nor the requestor has explained how Brackenridge Hospital is a governmental body subject to the Act. Accordingly, the medical examiner may not release the requested information to the requestor, in this instance, under the interagency transfer doctrine without waiving your section 552.108 claim.

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).

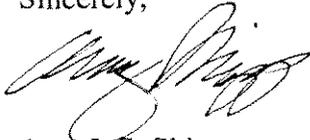
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/krl

Ref: ID# 270817

Enc. Submitted documents

c: Ms. Irene Lopez, RN
Trauma Registrar
Brackenridge & Children's Hospital of Austin
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(w/o enclosures)