



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2007

Ms. Catherine C. Kemp
Records Supervisor
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR2007-04557

Dear Ms. Kemp:

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# 276300.

The Rowlett Police Department (the "department") received a request for the police report or medical examiner's report pertaining to a specified incident. You state that copies of the police reports are being provided to the requestor. We understand you to claim that the submitted information is not subject to the Act. In the alternative, you claim that the copies of the medical examiner's reports are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your claims and reviewed the submitted information.

Initially, we address the department's contention that the submitted information is not subject to the Act because the original version of the report is with the medical examiner. The Act is applicable to "public information." *See* Gov't Code § 552.021. "Public information" is defined as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body[] or . . . for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). Section 552.002 does not require that the information be

created by the governmental body. In this instance, you state that the department collected the report at issue for the department's own internal investigative purposes. We therefore determine that the submitted information was collected or maintained in connection with the transaction of official business of the department, and thus, is public information as defined by section 552.002. Gov't Code § 552.002(a). Thus, this information is subject to the Act and must be released, unless an exception to disclosure is shown to be applicable.

In the alternative, you assert that the copies of the medical examiner's reports "are exempt from disclosure pursuant to section 552.101 [of the Government Code]" Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101; *see also* Open Records Decision Nos. 611 at 1 (1992) (relating to common-law privacy), 600 at 4 (1992) (relating to constitutional privacy), 478 at 2 (1987) (relating to statutory confidentiality).

However, you do not cite to any specific law, and we are not aware of any law, that makes any portion of the submitted information confidential under section 552.101 of the Government Code. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Accordingly, the department may not withhold the copies of the medical examiner's reports under section 552.101 of the Government Code.

You also claim that section 552.108 of the Government Code, the "law enforcement exception," excepts from disclosure the copies of the medical examiner's reports. Section 552.108 provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
- (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or
- (4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if the release of the information would interfere with a pending criminal investigation or prosecution. *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). Section 552.108(b)(1) protects internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. Section 552.108(a)(3) is applicable to information collected or disseminated under section 411.048 of the Government Code. Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney

representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state.

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 that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you have failed to demonstrate that any aspect of section 552.108 is applicable to any of the information at issue. We therefore conclude that the department may not withhold the medical examiner's reports under section 552.108 of the Government Code.

In summary, the department has failed to demonstrate that sections 552.101 and 552.108 of the Government Code apply in this instance. The copies of the medical examiner's reports must be released.

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).

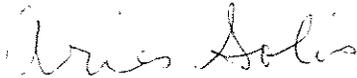
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,



Aries Solis
Assistant Attorney General
Open Records Division

AS/eeg

Ref: ID# 276300

Enc. Submitted documents

c: Mr. Zach Scott
c/o Ms. Catherine C. Kemp
Records Supervisor
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(w/o enclosures)