



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2007

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney's Office
1019 Congress 15th Floor
Houston, Texas 77002

OR2007-09288

Dear Mr. Swope:

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# 288608.

The Harris County Medical Examiner (the "medical examiner") received a request for autopsy reports for two named decedents. You have submitted information relating to one of the decedents that the medical examiner seeks to withhold under section 552.108 of the Government Code. You also state that the submitted information is the subject of a previous open records letter ruling. We have considered your arguments and have reviewed the submitted information. We assume that the medical examiner has released any responsive information relating to the other decedent, to the extent that such information existed when the medical examiner received this request.¹ If not, then any such information must be released immediately. See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

You state that the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2007-5573

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(2007). You inform us that there has been no change in the law, facts, and circumstances on which the previous ruling is based. Based on your representations, we conclude that the medical examiner may continue to rely on Open Records Letter No. 2007-5573 as a previous determination with respect to the submitted information.² See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

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).

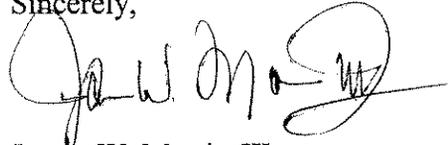
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

²As we are able to make this determination, we need not address your other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 288608

Enc: Submitted documents

c: Ms. Arlene Kelly
2715 Lazy Spring Drive
Houston, Texas 77080
(w/o enclosures)