



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2011

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2011-00812

Dear Ms. Fourt:

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# 410634.

The Tarrant County Medical Examiner's Office (the "medical examiner") received a request for a specified autopsy report. You claim the medical examiner need not comply with the request pursuant to section 552.028 of the Government Code. Alternatively, you claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You argue that the requestor made the present request for information on behalf of an inmate. You state the suspect at issue in the submitted information is an inmate confined in a correctional facility, and you argue that the requestor made the present request as an agent of this incarcerated individual. The requestor, in this instance, is the wife of the inmate. However, the fact that the requestor is the inmate's spouse does not in itself establish that she submitted the request as an agent of the inmate. As you have not provided any additional information establishing that the requestor is in fact acting as an agent of an inmate, we cannot conclude that section 552.028 is applicable in this instance. Accordingly, we will address your arguments against disclosure under the Act.

Section 552.108 of the Government Code excepts from 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 must reasonably explain how and why section 552.108 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)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, 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 state that the submitted information is related to a pending prosecution by the Tarrant County District Attorney's Office (the "district attorney"). You state, and provide documentation showing, that the district attorney objects to disclosure of the submitted information because release would interfere with the prosecution. Based on your representation and the submitted affidavit, we conclude that the medical examiner may withhold the submitted information under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1975)(court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/vb

Ref: ID# 410634

Enc. Submitted documents

c: Requestor  
(w/o enclosures)