



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2011

Ms. Susan Fillion  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2011-08302

Dear Ms. Fillion:

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# 422603 (C.A. File Nos. 11PIA0131, 11PIA0133-11PIA0139).

The Harris County Institute of Forensic Sciences (the "institute") received a request for nine specified autopsy reports. You inform this office that you have released five of the requested autopsy reports and are withdrawing your request for a decision related to those released reports. You claim the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information at issue.

You assert autopsy report case nos. ML10-3849 and ML10-3279 are excepted under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. See Open Records Decision Nos. 474 at 4-5 (1987). Where a governmental body possesses information relating to a

pending case of a law enforcement agency, the governmental body agency may withhold the information under section 552.108 if (1) it demonstrates the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You have provided an affidavit stating the Houston Police Department objects to disclosure of autopsy report case no. ML10-3279 because its release would interfere with an ongoing criminal investigation. You also have provided an affidavit stating the Harris County District Attorney's Office objects to disclosure of autopsy report case no. ML10-3849 because its release would interfere with an ongoing criminal investigation. Based on these representations, we find release of autopsy report case nos. ML10-3849 and ML10-3279 at this time would interfere with the ongoing criminal investigations. Therefore, we conclude the institute may withhold these two autopsy reports from disclosure 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 [14th 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).

We also understand you to assert autopsy report case nos. ML10-3576 and ML10-1482 are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). As noted above, section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* ORD No. 474 at 4-5.

You have provided affidavits from the Harris County Sheriff's Office (the “sheriff”) stating the sheriff seeks to withhold autopsy report case nos. ML10-3576 and ML10-1482 because they pertain to concluded criminal investigations that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to these reports. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information). Thus, we find the institute may withhold autopsy report case nos. ML10-3576 and ML10-1482 on behalf of the sheriff under section 552.108(a)(2) of the Government Code.

In summary, the institute may withhold autopsy report case nos. ML10-3279 and ML10-3849 under section 552.108(a)(1) on behalf of the Houston Police Department and the Harris County District Attorney's Office, respectively. The institute may withhold autopsy report case nos. ML10-3576 and ML10-1482 under section 552.108(a)(2) on behalf of the sheriff.

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,



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

ALS/sdk

Ref: ID# 422603

Enc. Submitted documents

c: Requestor  
(w/o enclosures)