



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2013

Mr. Glen Van Slyke
Assistant County Attorney
Legal Counsel to the Chief Medical Examiner
Harris County Institute of Forensic Science
1885 Old Spanish Trail, Suite 610
Houston, Texas 77054

OR2013-01029

Dear Mr. Van Slyke:

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# 476396.

The Harris County Institute of Forensic Science (the "institute") received a request for the employee files and work schedules of persons who were present during a specified autopsy, records of attendance or observation of the autopsy, and a named assistant medical examiner's personnel file. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us some of the information at issue was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-12705 (2012). In that ruling, we determined the institute may withhold the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

responsive information at issue under section 552.108(a)(1) of the Government Code. We understand the law, facts, and circumstances on which the previous ruling was based have not changed. Therefore, to the extent the information at issue is identical to the information ruled on in that ruling, we conclude the institute may rely on Open Records Letter No. 2012-12705 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (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). However, because the remaining information at issue is not encompassed by the previous determination, we will consider your arguments.

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 related 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 the named assistant medical examiner and other employees of the institute who attended or observed the specified autopsy are potential material witnesses in a pending murder case styled *State of Texas v. Khahn Phan*, Cause No. 1225435 (“*State v. Khahn Phan*”). You contend the information at issue could be used to impeach the qualifications or credibility of the named assistant medical examiner and other employees of the institute who attended or observed the autopsy. You have provided an affidavit from an assistant district attorney for Harris County objecting to disclosure of the information at issue. The assistant district attorney states release of the information would interfere with the prosecution of *State v. Khahn Phan*. Based on your arguments and the affidavit, we conclude you have demonstrated release of the remaining information at issue would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude the institute may withhold the remaining information at issue under

section 552.108(a)(1) of the Government Code.² *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 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, 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 476396

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.