



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2013-20107A

Dear Ms. Winn:

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#506037.

This office issued Open Records Letter No. 2013-20107 (2013) on November 18, 2013. We have examined this ruling and determined Open Records Letter No. 2013-20107 needs additional clarification. Consequently, this decision serves as the clarified ruling and is a substitute for Open Records Letter No. 2013-20107. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

The Travis County Medical Examiner's Office (the "medical examiner's officer") received three requests for certain categories of information pertaining to the death of a named individual. You state the medical examiner's office does not have information responsive to the requests for a preliminary autopsy report or video documentation.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹We note 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 dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note you have not submitted for our review the requested custodial death report. To the extent any such information was maintained by the medical examiner's office on the date the medical examiner's office received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, you state the medical examiner's office will withhold the requested autopsy photographs without requesting a decision from our office pursuant to subsection 11(b) of article 49.25 of the Code of Criminal Procedure. The Eighty-third Legislature recently amended section 11 of article 49.25 of the Code of Criminal Procedure to include subsection 11(b). Subsection 11(b) permits a governmental body to withhold a photograph or x-ray described by subsection (a) without requesting a decision from the attorney general. Crim. Proc. Code art. 49.25, § 11(b). We note, however, autopsy photographs are required to be disclosed if the person depicted in the autopsy photographs died while in the custody of law enforcement. *Id.* art. 49.25, § 11(a)(2) (photograph of body of person who died while in the custody of law enforcement is subject to disclosure). Here, the autopsy in question pertains to an individual who died while in the custody of law enforcement. Therefore, the medical examiner's office may not withhold the autopsy photographs described by subsection (a) pursuant to subsection (b). *See id.* art. 49.25, § 11(b) (subsection (b) does not affect required disclosure of photograph under subsection (a)(2)).

You assert the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 inform us the Travis County District Attorney's Office (the "district attorney's office") objects to disclosure of the submitted information because its release would interfere with an ongoing criminal prosecution. Based on your representation, we conclude release of the

submitted information would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, the medical examiner's office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

In summary, the medical examiner's office may withhold the submitted reports under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The medical examiner's office must release the remaining requested information, including the autopsy photographs.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eb

Ref: ID#506037

Enc. Submitted documents

c: Requestor
(w/o enclosures)