



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2014

Mr. Andrew Warthen
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2014-03111

Dear Mr. Warthen:

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# 514664.

The Bexar County Medical Examiner's Office (the "medical examiner") received a request for the autopsy reports for two named individuals. You claim the submitted information is exempted from disclosure under section 552.108 of the Government Code.¹ We have

¹Although you also raise section 552.101 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note you have only submitted an autopsy report for one of the named individuals. To the extent an autopsy report for the second named individual exists and was maintained by the medical examiner on the date the medical examiner 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 information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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[.]” *Id.* § 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.

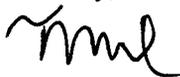
You inform us the Bexar County Criminal District Attorney's Office (the “district attorney's office”) objects to the release of the submitted information, as this information is related to an ongoing investigation. Based on this representation and our review, we conclude that the medical examiner may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. *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).

²We 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.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 514664

Enc. Submitted documents

c: Requestor
(w/o enclosures)