



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2014

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

OR2014-21705

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# 545165.

The Bexar County Medical Examiner's Office (the "medical examiner's office") received a request for the autopsy report pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the requestor argues "some of the information about the manner, cause and injury that led to" the named individual's death has already been made public. The Act does not permit the selective disclosure of information to the public. *See id.* §§ 552.007(b), .021;

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<sup>1</sup>Although you raise section 552.101 of the Government Code against disclosure of the submitted information, you provide no arguments explaining how this exception is applicable. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). However, section 552.007 does not prohibit a governmental body from withholding information that is not identical to the information that has been previously released. We note the requestor does not state the information released to the public is identical to the submitted autopsy report. Further, we have no indication the information at issue has been released in its exact form to any members of the public. Accordingly, we find section 552.007 of the Government Code is inapplicable to the information at issue. Therefore, we will address the medical examiner's office's argument against disclosure of the information at issue under section 552.108 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). Generally, 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies to information held by a “law enforcement agency.” *See* § 552.108(a)(1). However, 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 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 District's Attorney's Office (the “district attorney's office”) claims the submitted information is excepted from public disclosure because the requested information relates to an ongoing criminal homicide investigation and possible pending prosecution. Based on your representations and our review, we find 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, 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.

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](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,



Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

Ref: ID# 545165

Enc. Submitted documents

c: Requestor  
(w/o enclosures)