



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Mr. Kyle St. Clair  
Assistant General Counsel  
Office of General Counsel  
University of North Texas System  
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OR2015-12395A

Dear Mr. St. Clair:

This office issued Open Records Letter No. 2015-12395 (2015) on June 23, 2015. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on June 23, 2015. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 568207 (UNT System PIR No. 001399).

The University of North Texas Health Science Center (the "university") received a request for information pertaining to (1) unidentified human remains received by the university's Human Identification Lab or Forensic Anthropology Lab for anthropological analysis, and (2) DNA samples from unidentified human remains received by the university's Human Identification Lab or Forensic Services unit during a specified time period.<sup>1</sup> We understand you have provided some information to the requestor. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code.

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<sup>1</sup>We note the university asked the requestor to narrow his request, but the requestor declined to do so. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* City of Dallas v. Abbott, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

You also state release of the submitted information may implicate the interests of third parties. Accordingly, you state you notified these third parties of the request for information and of their right to submit comments to this office. *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). We have received and considered comments from the requestor and two interested third parties. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we understand the requestor contends the university did not comply with section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The requestor asserts the university received the request for information on December 22, 2014. You state the university received the request for information on January 22, 2015. You further state the university requested clarification of the request on February 5, 2015, and received a response to the request for clarification from the requestor on March 30, 2015. The determination of the date the university received the request for information is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, we must accept the representations of the university that it received the original request for information on January 22, 2015, and the response to the request for clarification on March 30, 2015. This office does not count the date the request was received or days a governmental body's offices were closed for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the university's ten-business-day deadline was April 13, 2015. You requested a ruling from this office on April 13, 2015. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we conclude the university complied with the requirements of section 552.301(b) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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). By

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<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.

its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. The university is not a law enforcement agency. However, this office has concluded section 552.108 may be invoked by any proper custodian of information that relates to the underlying incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency has custody of information related to an ongoing criminal investigation 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 is related to an ongoing criminal investigation and a representation from a law enforcement entity that it wishes to have the information withheld. We have received comments from the Hidalgo County District Attorney's Office explaining the information pertaining to case numbers 1101772, A11-178, 1103470, 12-36248, A12-178, 10-30734, 11-08336, 12-16495, A13-71, 13-39802, and 13-50806 relates to open investigations and objecting to release of this information under section 552.108(a)(1). We have also received comments from the 34th Judicial District Attorney's Office explaining the information pertaining to case number RE-2008-00067 relates to a pending prosecution and objecting to release of this information under section 552.108(a)(1). Based on these representations, we conclude the release of the information at issue 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). Thus, the university may withhold the information pertaining to case numbers 1101772, A11-178, 1103470, 12-36248, A12-178, 10-30734, 11-08336, 12-16495, A13-71, 13-39802, and 13-50806 under section 552.108(a)(1) of the Government Code on behalf of the Hidalgo County District Attorney's Office. Further, the university may withhold the information pertaining to case number RE-2008-00067 under section 552.108(a)(1) of the Government Code on behalf of the 34th Judicial District Attorney's Office.<sup>3</sup> However, you do not state, and have not otherwise demonstrated, any investigative agency with a law enforcement interest seeks to withhold the remaining information at issue. Accordingly, the university has failed to demonstrate section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue, and the university may not withhold any portion of the remaining information at issue on that basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. A portion of the remaining information consists of a photograph and x-ray taken during an autopsy. We note neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the university must withhold the photograph and x-ray you indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.<sup>4</sup>

Section 552.101 of the Government Code also encompasses information made confidential by article 63.017 of the Code of Criminal Procedure, which provides the following:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

*Id.* art. 63.017. You contend some of the remaining information is confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, “clearinghouse” is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety. *Id.* arts. 63.001(7), .002(a). The information at issue consists of a forensic anthropology report created by the university. The forensic anthropology report is not a clearinghouse record for purposes of article 63.017. Therefore, the university may not withhold any of the remaining information under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), .002(a).

Section 552.101 of the Government Code also encompasses section 411.153 of the Government Code, which provides, as follows:

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under [the Act].
- (b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.
- (c) An offense under this section is a state jail felony.
- (d) A violation under this section constitutes official misconduct.

Gov't Code § 411.153. A "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. *See id.* § 411.141(6)-(7). "Forensic analysis" is defined as "a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action." *See* Crim. Proc. Code art. 38.35(4); *see also* Gov't Code § 411.141(10) (providing that "forensic analysis" has meaning assigned by article 38.35). A "DNA database" means "one or more databases that contain forensic DNA records maintained by the director of [the Department of Public Safety ("DPS)]." Gov't Code § 411.141(5); *see id.* § 411.001(3).

Upon review, we find none of the remaining information at issue constitutes DNA records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. Accordingly, the university may not withhold any of the remaining information at issue under section 552.101 of the Government Code on the basis of section 411.153 of the Government Code.

In summary, the university may withhold the information pertaining to case numbers 1101772, A11-178, 1103470, 12-36248, A12-178, 10-30734, 11-08336, 12-16495, A13-71, 13-39802, and 13-50806 under section 552.108(a)(1) of the Government Code on behalf of the Hidalgo County District Attorney's Office. The university may withhold the information pertaining to case number RE-2008-00067 under section 552.108(a)(1) of the Government Code on behalf of the 34th Judicial District Attorney's Office. The university must withhold the photograph and x-ray you indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The university must release the remaining information.

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/>

[url\\_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,



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KJM/akg

Ref: ID# 568207

Enc. Submitted documents

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