



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2015

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-19098

Dear Ms. Cost:

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# 579323 (DPS PIR# 15-3040, 15-3050, 15-3298).

The Texas Department of Public Safety (the "department") received three requests from different requestors for information pertaining to the death of a named individual. You state the department has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information appear to be records of a grand jury. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary, and therefore, not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the department holds the information at issue as an agent of the grand jury, such information consists of a record of the judiciary that is not subject to disclosure under the Act. Thus, the department is not required to release that information in response to the instant request. To the extent the department does not hold the information at issue as an agent of the grand jury, we will consider the department's arguments against its disclosure.

Next, we note the submitted autopsy photographs are subject to section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

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

(b) Under the exception to public disclosure provided by Subsection (a), a governmental body . . . may withhold a photograph or x-ray described by Subsection (a) without requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code. This subsection does not affect the required disclosure of a photograph or x-ray under Subsection (a)(1) or (2).

Crim. Proc. Code art. 49.25, § 11. We note the submitted autopsy photographs pertain to an individual who died while in the custody of law enforcement. Photographs taken of the body of a person who died while in the custody of law enforcement are public and not confidential. *Id.* § 11(a)(2). Although you seek to withhold these photographs under section 552.108 of the Government Code, we note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the submitted autopsy photographs must be released to the requestors pursuant to section 11(a)(2) of article 49.25 of the Code of Criminal Procedure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information you have marked relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to the information at issue. Thus, the department may withhold the remaining

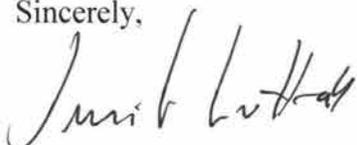
information you have marked pursuant to section 552.108(a)(2) of the Government Code.¹

In summary, to the extent the department holds the information at issue as an agent of the grand jury, such information consists of a record of the judiciary that is not subject to disclosure under the Act. The department must release the submitted autopsy photographs pursuant to section 11(a)(2) of article 49.25 of the Code of Criminal Procedure. The department may withhold the remaining information you have marked pursuant to section 552.108(a)(2) of the Government Code. The remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 579323

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.