



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2967

Dear Ms. Wiegman:

You ask that we clarify a portion of our decision in Open Records Letter No. 98-2307 (1998). Your request was assigned ID# 120618.

Open Records Letter No. 98-2307, which concerned a request for an investigation of a certain licensed professional counselor and marriage and family therapist, determined that the Department of Health (the "department") may withhold portions of the information based on section 552.103 of the Government Code and must withhold portions of the information based on section 552.101 of the Government Code. Although the department raised section 552.108 of the Government Code, we did not consider that claim in Open Records Letter No. 98-2307, since we ruled under sections 552.101 and 552.103. You now state that you are unclear whether section 552.103 applies to one document. You also now ask that we consider your section 552.108 claim as for this document in the event that we find section 552.103 inapplicable.

The opposing party in the litigation appears to have seen the document at issue. Thus, we find section 552.103 inapplicable. Open Records Decision Nos. 349 (1982), 320 (1982).

Section 552.108(a)(1) excepts from disclosure information 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. When an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). You inform us that the Cleburne Police Department is using the document in its criminal investigation. We therefore conclude that the department may withhold the document from required public disclosure based on section 552.108 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Deputy Chief
Open Records Division

KHH/ch

Ref: ID# 120618

Enclosure: Submitted document

cc: Ms. Twyla Tranfaglia
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(w/o enclosure)