



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2003

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County District Attorney
Frank Crowley Court's Building
133 North Industrial Blvd., LB-19
Dallas County, Texas 75207-4399

OR2003-5878

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186343.

The Dallas County Medical Examiner's Office (the "M.E.'s Office") received four requests for the following information:

- (1) copies of all autopsy and toxicology reports and any and all related public documents on eleven named individuals,
- (2) copies of the same eleven autopsy reports and a list of all individuals who through autopsies are believed to have died by overdose the past two years in Dallas County,
- (3) seven of the same eleven autopsy reports, and
- (4) a copy of one of the same eleven autopsy reports

The Dallas County District Attorney (the "DA") has submitted briefing to this office on behalf of the DA and the M.E.'s Office. You state that the DA has released redacted copies of ten of the eleven requested autopsy reports. You claim that the portions of the autopsy reports you have marked, as well as the information related to the eleventh named individual, are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that the M.E.'s Office does not possess a list of individuals who are believed to have died by overdose in Dallas County in the requested form or a readily retrievable form, and that compliance with this request would require the M.E.'s Office to perform research and create a new document. We note that a governmental body has a duty to make a good faith effort to relate a request for information to records the governmental body holds. Open Records Decision No. 561 at 8 (1990). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Public Information Act (the "Act"). *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with predecessor of Act does not determine availability of information); Open Records Decision No. 497 (1988). We also note, however, that the M.E.'s Office does not have to produce the responsive information in the format requested or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, *pet. denied*); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). We now turn to your claimed exceptions for the submitted information.

Section 552.108(a) 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." The M.E.'s Office is not a "law enforcement agency" for purposes of section 552.108. *See* Open Records Decision No. 199 (1978) (predecessor statute). However, a non-law-enforcement agency may withhold information under section 552.108 if the information relates to possible criminal conduct and has been or will be forwarded to an appropriate law enforcement agency for investigation. *See* Attorney General Opinion MW-575 (1982), Open Records Decision No. 493 (1988); *see also* Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident). A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that "although the requestor addressed her request to the [M.E.'s Office], the information sought is information directly related to an active criminal investigation being

jointly conducted by [the DA], the Federal Bureau of Investigation, the Texas Attorney General's office, the Dallas Police Department, and the Health and Human Services Office of the Inspector General." You further state that in response to this criminal investigation, law enforcement officers executed multiple search warrants at the business and residence of a named physician, and that the requested autopsy reports correspond to the deceased individuals named in the search warrant affidavit, and thus the requested reports are "inextricably related to the pending criminal investigation." Finally, you state that the DA has reviewed the requested reports and believes that "premature release of some of the information contained within those reports would interfere with the active criminal investigation and subsequent criminal prosecution of individuals connected to this investigation." Based on these representations and our review of the submitted reports, we conclude that the M.E.'s Office may withhold the marked information in the reports pursuant to section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Because we base our ruling on section 552.108, we need not address your argument under section 552.103 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

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Enc. Submitted documents

c: Ms. Holly Becka
The Dallas Morning News
P. O. Box 655237
Dallas, Texas 75265
(w/o enclosures)

Mr. Mark Smith
Producer
WFAA TV
606 Young Street
Dallas, Texas 75202
(w/o enclosures)

Ms. Donna Ressi
c/o Ms. Larissa T. Roeder
Frank Crowley Court's Building
133 North Industrial Blvd., LB-19
Dallas County, Texas 75207-4399
(w/o enclosures)

Mr. Danny Barnes
Texas Litigation Services
5646 Milton Street, Suite 505
Dallas, Texas 75206
(w/o enclosures)