ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2005

Ms. Melanie Barton
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2005-07572

Dear Ms. Barton:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 230709.

The Southwestern Institute for Forensic Science (the "institute") received a request for the autopsy report of Gregory Friend. On behalf of the institute, the Dallas County District Attorney's Office argues the information is excepted from public disclosure under section 552.108 of the Government Code.

The institute did not seek an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301(b). Furthermore, the institute did not submit the requisite information within the statutory fifteen-day deadline. *Id.* § 552.301(e). The institute's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code may be a compelling reason for non-disclosure. Open Records Decision No. 586 (1991). Section 552.108 excepts from disclosure:

> (a) Information 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[.]

Gov't Code § 552.108(a). In this instance, the Dallas County District Attorney's Office has advised that the disclosure of the requested information would interfere with the prosecution of a pending criminal case. Therefore, the institute may withhold the requested information pursuant to section 552.108(a)(1).

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).

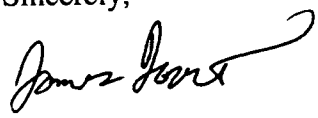
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 of 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/jev

Ref: ID# 230709

Enc: Submitted documents

c: Ms. Jessica Rudd
Trauma Registry
Baylor University Medical Center
3500 Gaston Avenue
Dallas, Texas 75246
(w/o enclosures)

Mr. Paul Brauchle
Law Office of Paul Brauchle
6500 Greenville, Suite 700
Dallas, Texas 75206-1014
(w/o enclosures)