ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2005

Ms. Jennifer McClure
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2005-11383

Dear Ms. McClure:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 242245.

The Southwestern Institute for Forensic Sciences (the "institute") received a request for the autopsy report on Brenda Givens. The institute asserts 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 deadlines. *See* Gov't Code § 552.301(b) (governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request), (e) (requisite information must be submitted within fifteen business days of receiving the written request). 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 is a compelling reason for non-disclosure. Open Records Decision No. 586 (1991).

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency is in the custody of information that would

otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides the attorney general with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information. The institute explains the prosecutor objects to the release of the report because it relates to their pending investigation and prosecution. We agree that release of the information at this time would interfere with the ongoing case. Therefore, based on the institute's representations, the institute may withhold the autopsy report from disclosure under 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).

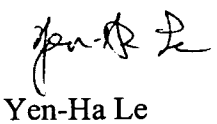
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 at the Office of the Attorney General 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. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 242245

Enc: Submitted documents

c: Dr. Ernest Dunn
Trauma Medical Director
Methodist Dallas Medical Center
P.O. Box 655999
Dallas, Texas 75265-5999
(w/o enclosures)