ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2006-00745

Dear Ms. Joe:

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# 242394.

The Travis County Medical Examiner's Office (the "medical examiner") received a request for the autopsy photographs of a named decedent. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

Section 552.108(a)(1) of the Government Code 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. Gov't Code § 552.108(a)(1). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. The medical examiner is not a law enforcement agency. This office has determined, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and provides this office with a representation from the law enforcement entity that the law enforcement agency wishes to withhold the information.

In this case, you state that the Federal Bureau of Investigation objects to the release of the requested autopsy photographs, indicating that they relate to an ongoing criminal investigation. Based on your representations and our review, we find that release of the requested photographs would interfere with the detection, investigation, or prosecution of crime. We therefore conclude the requested photographs may be withheld pursuant to section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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).

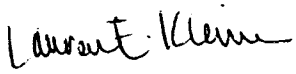
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/er

Ref: ID# 242394

Enc. Submitted documents

c: Mr. David Fisher
605 North Highway 95
Elgin, Texas 78621
(w/o enclosures)