



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2011

Ms. Susan Fillion
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2011-06846

Dear Ms. Fillion:

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# 421795 (C.A. File Number 11PLA0124).

The Harris County Institute of Forensic Sciences (the "institute") received a request for a specified autopsy report. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has 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 this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state, and provide an affidavit from the Harris County Sheriff's Office (the "sheriff") confirming, the sheriff seeks to withhold the submitted information because it pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to the submitted information. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information). Based on your representation, the submitted affidavit, and our review, the institute may withhold the submitted information on behalf of the sheriff under section 552.108(a)(2) of the Government Code.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 421795

Enc. Submitted documents

c: Requestor
(w/o enclosures)