



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2011

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196

OR2011-10369

Dear Ms. Fourt:

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# 424439.

The Tarrant County Medical Examiner's Office (the "medical examiner") received a request for information related to "the Lake Waco triple murders." We understand you to assert that the requested information is not public information under the Act. Although you take no position on whether the submitted information is excepted from disclosure under the Act, you state that release of this information may implicate the proprietary interests of a third party. Accordingly, you inform us that you notified the third party of the request and of his right to submit comments to this office as to why the information at issue should not be released.¹ We received comments from the third party and have reviewed the submitted information.

Initially, we address the assertion by medical examiner and the third party that the Act does not apply to the submitted information. The Act is applicable to "public information." *See* Gov't Code § 552.021. "Public information" is defined as information that is collected,

¹See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information that is in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

In this instance, you assert that the requested information is not subject to the Act because it pertains to a forensic consultation that was requested and paid for by private individuals. We note that article 49.25 of the Code of Criminal Procedure authorizes certain counties to establish a medical examiner's office and provides medical examiners with certain duties and authority. *See* Crim. Proc. Code art. 49.25. Section 11 of article 49.25 provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act.]

Id. § 11. Thus, the records related to an investigation of a death performed by the medical examiner are subject to required public disclosure in accordance with the Act. *Id.*; *see also* Open Records Decision No. 21 at 2 (1974) (autopsy reports prepared by medical examiner are public records).

The submitted information consists of records related to an investigation of a death conducted by employees of the medical examiner. You state the employees agreed to perform "forensic and DNA testing" on certain evidence. You further state "the testing included the use of county equipment[.]" You explain "the cost for said testing was paid for by private individuals whereby [Tarrant County] was wholly compensated." The submitted information is held by the medical examiner "in connection with the transaction of official business." Gov't Code § 552.002(a). Therefore, the submitted information is subject to the Act and must be released, unless an exception to disclosure is shown to be applicable.

Next, we note that some of the submitted documents are not responsive to the instant request for information, as they were created after the date that the medical examiner received the

request. This ruling does not address the public availability of any information that is not responsive to the request, and the medical examiner need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

The third party asserts the requested information is “protected by the ‘work product’ privilege,” which we address under section 552.111 of the Government Code.² Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. Section 552.111 is a discretionary exception to public disclosure that protects a governmental body’s interests, and not those of a third party, and may be waived. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov’t Code § 552.111 may be waived). Therefore, because the medical examiner has not raised section 552.111, the submitted information may not be withheld under this exception.

We note some of the submitted information is subject to sections 552.130, 552.136, and 552.137 of the Government Code.³ Section 552.130 provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)). The medical examiner must withhold the license plate number we have marked under section 552.130.

Section 552.136 of the Government Code provides “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). Accordingly, the medical examiner must withhold the Federal Express account numbers we have marked under section 552.136.

²Although the third party raises the attorney work product privilege under Texas Rule of Evidence 503, we note section 552.111 of the Government Code is the proper exception to raise when asserting the attorney work product privilege in this instance.

³The Office of the Attorney General will raise mandatory exceptions such as sections 552.130, 552.136, and 552.137 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)–(c). The e-mail addresses we have marked are not a type specifically excluded by section 552.137(c). Accordingly, the medical examiner must withhold the marked e-mail addresses under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

In summary, the medical examiner must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The medical examiner also must withhold the marked e-mail addresses under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their disclosure. The remaining responsive information must be released to the requestor.⁴

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

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⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code and a personal e-mail address under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 424439

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)