



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2011

Ms. Susan Fillion
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2011-12377

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# 432276 (C.A. File No. 11PIA0280).

The Harris County Institute of Forensic Sciences (the "institute") received a request for two specified autopsy reports. You claim 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.

We note one of the requested autopsy reports was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-04954 (2011). In that ruling, we concluded the institute may withhold the submitted information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-04954 was based have changed. Accordingly, we conclude the institute may continue to rely on Open Records Letter No. 2011-04954 as a previous determination and withhold the previously ruled upon autopsy report in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You assert the remaining requested autopsy report is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation 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[.]” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body agency may withhold the information under section 552.108 if (1) it demonstrates the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You have provided an affidavit stating the Harris County District Attorney’s Office objects to disclosure of the submitted information because its release would interfere with a pending criminal prosecution. Based on these representation, we find release of the information at this time would interfere with the ongoing criminal prosecution. Therefore, we conclude the institute may withhold the requested autopsy report at issue from disclosure under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

In summary, the institute may continue to rely on Open Records Letter No. 2011-04954 and withhold the previously ruled upon autopsy report in accordance with that ruling. The institute may withhold the other requested autopsy report under section 552.108(a)(1) 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,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', with a long horizontal flourish extending to the right.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 432276

Enc. Submitted documents

c: Requestor
(w/o enclosures)