



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2011

Ms. Molly Higgins Santos
Assistant County Attorney
Webb County Attorney's Office
P.O. Box 420268
Laredo, Texas 78042-0268

OR2011-14242

Dear Ms. Santos:

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# 432190.

The Webb County Sheriff's Department (the "sheriff") received a request for information relating to the death of a named inmate of the county jail. You claim the requested information is excepted from disclosure under section 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.²

We first note some of the submitted information, which we have marked, was created after the date of the sheriff's receipt of the instant request for information. The Act does not require a governmental body to release information that did not exist when it received a

¹Although you also raise section 552.101 of the Government Code, you have submitted no arguments sufficient to demonstrate the applicability of that exception. Therefore, this decision will not address section 552.101. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exceptions apply to information at issue).

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

request or create responsive information.³ Thus, because it did not exist when the sheriff received the instant request, the marked information is not responsive to the request. Therefore, this decision does not address the public availability of the marked information, which the sheriff need not release in response to the instant request.

Next, we address your claim under section 552.108 of the Government Code for the rest of the submitted information. 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[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that although section 552.108 is generally not applicable to information relating to an internal investigation that is purely administrative in nature, such information may be withheld under this exception if its release would interfere with the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied). We also note 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). In this instance, you inform us the Texas Rangers are investigating the custodial death to which the information at issue pertains and have asked that the information be withheld from public disclosure. Based on your representations, we conclude the sheriff may withhold the submitted responsive information on behalf of the Texas Rangers 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). As we are able to make this determination, we need not address your other arguments against disclosure.

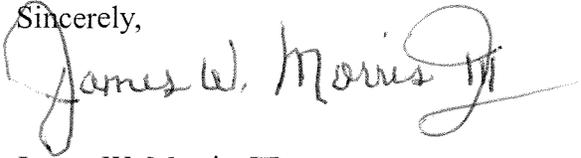
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 that reads "James W. Morris, III". The signature is written in a cursive style with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 432190

Enc: Submitted documents

c: Requestor
(w/o enclosures)