



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2012

Mr. Glen Van Slyke
Assistant County Attorney
Harris County Attorney's Office
1885 Old Spanish Trail, Suite 610
Houston, Texas 77054

OR2012-03070

Dear Mr. Van Slyke:

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# 446707.

The Harris County Institute of Forensic Sciences (the "institute") received seven requests from the same requestor for (1) a named county employee's oath of office and anti-bribery statement; (2) records of a specified death investigation; (3) contracts and agreements permitting medical students, interns, fellows, or residents to perform autopsies or other forensic examinations; (4) contracts and agreements permitting autopsies or other forensic examinations to be performed on persons who did not die in Harris County; (5) communications with the Harris County Attorney's Office ("the county attorney's office") concerning the Harris County Medical Examiner (the "medical examiner"), his status, and his compliance with Texas law; (6) communications with the Harris County District Attorney's Office (the "district attorney's office") concerning the medical examiner and his status and compliance with Texas law; and (7) communications with the district attorney's office concerning requests under the Act for autopsy or inquest reports. You state some of the requested information was the subject of a previous open records letter ruling. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note some of the e-mails submitted as Exhibit H-2 were created subsequent to the institute's receipt of these requests for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive

information.¹ Thus, the submitted information that was created subsequent to the institute's receipt of these requests is not responsive to the requests. We also note some of the e-mails in Exhibit H-2 are not communications between the institute and the county attorney's or the district attorney's offices. Thus, those e-mails are not responsive to these requests for information. We have marked the submitted information that is not responsive to these requests. This decision does not address the public availability of the marked information, and the institute need not release that information in response to these requests.

We next note the submitted information does not include the oath of office, the anti-bribery statement, or the contracts and agreements sought in three of the present requests for information. Thus, although you state the institute has submitted representative samples of the requested information, the submitted information is not representative of the requested oath of office, anti-bribery statement, and contracts and agreements. This open records letter ruling is applicable only to the types of information you have submitted for our review. *See* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). This ruling does not authorize the institute to withhold any types of information that are substantially different from the types of information the institute has submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). We therefore assume the institute has released any other types of information that are responsive to the present requests, to the extent such information existed when the institute received the requests. If not, then the institute must release any such information immediately.² *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Next, we consider your arguments against disclosure of the submitted information that is responsive to the present requests. You state information related to the same death investigation that is the subject of one of the requests was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-18657 (2011). In the previous ruling, we concluded the institute may withhold information related to the death investigation in question on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code. You do not indicate there has been any change in the law, facts, and circumstances on which the previous ruling is based. Therefore, to the extent Open Records Letter No. 2011-18657 encompasses the submitted responsive information, we conclude the institute may continue to withhold any such information on the basis of the previous ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

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

²As previously noted, the Act does not require the institute to release information that did not exist when it received these requests or create responsive information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266; ORD 605 at 2, 555 at 1, 452 at 3, 362 at 2.

To the extent the previous ruling does not encompass the submitted responsive information, we address your claim 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[.]” 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). 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 inform us, and have provided an affidavit stating, the district attorney’s office objects to release of the submitted responsive information because the information is related to a pending criminal prosecution, and release of the information would interfere with the prosecution. Based on your representations and the submitted affidavit, we conclude any submitted responsive information that is not encompassed by Open Records Letter No. 2011-18657 may be withheld by the institute on behalf of the district attorney’s office 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).

In summary, (1) to the extent Open Records Letter No. 2011-18657 encompasses the submitted information, the institute may continue to withhold any such information on the basis of the previous ruling, and (2) any submitted responsive information not encompassed by the previous ruling may be withheld by the institute on behalf of the district attorney’s office under section 552.108(a)(1) of the Government Code.³

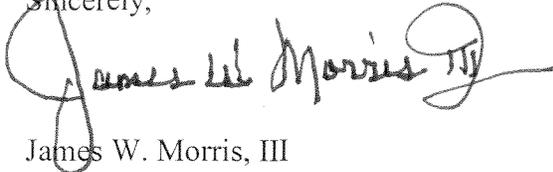
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

³As we are able to make these determinations, we need not address the other exceptions you claim.

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 that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

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

JWM/em

Ref: ID# 446707

Enc: Submitted documents

c: Requestor
(w/o enclosures)