



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2012

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

OR2012-03300

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# 451023 (C.A. File Nos. 12PIA0076, 12PIA0077, 12PIA0078, 12PIA0079, 12PIA0080, and 12PIA0082).

The Harris County Institute of Forensic Sciences (the "institute") received a request for seven specified autopsy reports. The institute also received a second request for one of the specified reports. You claim the six autopsy reports you have submitted are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. As you have not submitted the seventh requested report, we assume the institute has released any information responsive to the request for that report that existed when the institute received the request. If not, then any such information must be released immediately.¹ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.108 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 . . . 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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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).

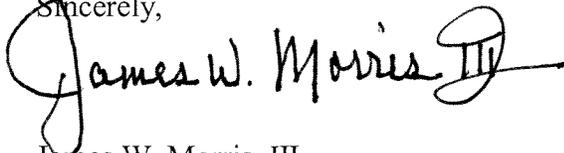
investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, 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 assert, and have provided affidavits from the Houston Police Department, the Metro Police Department, and the Harris County Sheriff's Office confirming, the law enforcement agencies concerned object to disclosure of the submitted information because its release would interfere with pending criminal cases. Based on your representations and the law enforcement agencies' affidavits, we conclude the institute may withhold the submitted information 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).

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

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

JWM/em

Ref: ID# 451023

Enc: Submitted documents

c: Requestors
(w/o enclosures)