



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2012

Mr. Glen Van Slyke
Assistant County Attorney
Harris County Institute of Forensic Sciences
1885 Old Spanish Trail, Suite 610
Houston, Texas 77054

OR2012-03502

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# 447249.

The Harris County Institute of Forensic Sciences (the "institute") received two requests from the same requestor for "the name, address, and telephone numbers of the next of kin, as well as the funeral home for [seven named] decedents[.]" You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.132 of the Government Code. You also state you have notified third parties who might have an interest in the submitted information.¹ *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released). We have considered your claims and reviewed the submitted representative sample of information.²

¹As of the date of this letter, we have not received comments from any interested third party.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We first note the institute did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information at issue; (2) a copy of the request for information; (3) a signed statement of the date of the governmental body's receipt of the request or evidence sufficient to establish the date of receipt; and (4) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, although you state the institute received the first request on December 16, 2011, the submitted request shows the institute date-stamped the request as received on December 14, 2011. Therefore, we find the institute received the request for information on December 14, 2011. Accordingly, the institute's deadlines under subsections 552.301(b) and 552.301(e) were December 29, 2011, and January 5, 2012, respectively.³

The envelope in which the institute submitted its request for a ruling from this office bears a meter-mark date of December 30, 2011; the envelope containing the information required by section 552.301(e) was meter-marked January 13, 2012. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the institute did not comply with section 552.301, and the submitted information is therefore presumed public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The institute claims section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't

³We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act.

Code § 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us the Houston Police Department (the “department”) asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the institute may withhold the submitted information on behalf of the department under section 552.108. Additionally, because the department’s claims under sections 552.101 and 552.132 of the Government Code can provide compelling reasons for non-disclosure, we also will address your claims regarding those exceptions.

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 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 state the department has informed the institute that the department objects to disclosure of the submitted information because its release would interfere with pending criminal investigations. Based on these representations, we conclude the institute may withhold the submitted information under section 552.108(a)(1) of the Government Code.⁴ *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,

⁴As our ruling is dispositive, we do not address your remaining claims.

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

CN/dls

Ref: ID# 447249

Enc. Submitted documents

c: Requestor
(w/o enclosures)