



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2012

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap, Ninth Floor
Fort Worth, Texas 76196-0201

OR2012-12036

Dear Ms. Fourt:

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# 460821.

The Tarrant County Medical Examiner's Office (the "medical examiner's office") received a request for the investigation report, autopsy report, and the results of any related toxicology tests pertaining to a specified incident. 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.

Initially, we note the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-07707 (2012). In that ruling, we concluded the medical examiner's office may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the Fort Worth Police Department (the "department"). In the instant request, the department again objects to disclosure of the requested information. Accordingly, as we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, then to the extent the submitted information is identical to the information submitted in the prior ruling, the medical examiner's office may continue to rely on Open Records Letter No. 2012-07707 as a previous determination and withhold the submitted information in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). To the extent the submitted information is not encompassed by the prior ruling, we will consider your argument against disclosure.

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). 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 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, and provide an affidavit from the department representing, the department objects to disclosure of the submitted information because release would interfere with a pending criminal investigation. Based on these representations, we conclude the medical examiner’s office 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

In summary, to the extent the submitted information is identical to the information submitted in Open Records Letter No. 2012-07707, the medical examiner’s office may continue to rely on this ruling as a previous determination and withhold the submitted information in accordance it. Otherwise, the medical examiner’s office may withhold the submitted information 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 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 460821

Enc. Submitted documents

c: Requestor
(w/o enclosures)