



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2012

Mr. Glen Van Slyke
Assistant County Attorney
Legal Counsel to the Chief Medical Examiner
Harris County
1885 Old Spanish Trail, Suite 610
Houston, Texas 77054

OR2012-12705

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# 462114.

The Harris County Institute of Forensic Sciences (the "institute") received a request for (1) the employee files and work schedules of persons who were present during a specified autopsy; (2) records of attendance or observation of the autopsy; and (3) a named assistant medical examiner's personnel file. You claim the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We first note some of the submitted information does not appear to be responsive to the request. The requestor specifically seeks access to information regarding persons who were present at, attended, or observed the specified autopsy and the named assistant medical examiner's personnel file. Thus, to the extent it does not consist of those types of records, the submitted information is not responsive to the request. This decision does not address

¹This 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 institute 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).

the public availability of any information that is not responsive to the request, and the institute need not release such information in response to the request.

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 related 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 named assistant medical examiner and other employees of the institute who attended or observed the specified autopsy are potential material witnesses in a pending murder case styled *State of Texas v. Khahn Phan*, Cause No. 1225435 (“*State v. Khahn Phan*”). You contend the requested information could be used to impeach the qualifications or credibility of the named assistant medical examiner and other employees of the institute who attended or observed the autopsy. You have provided an affidavit from an assistant district attorney for Harris County objecting to disclosure of the information at issue. The assistant district attorney states release of the information would interfere with the prosecution of *State v. Khahn Phan*. Based on your arguments and the affidavit, we conclude you have demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.108(a)(1)*. We therefore conclude the institute may withhold the requested information under section 552.108(a)(1) of the Government Code.² *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).

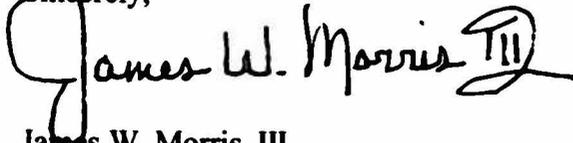
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²As we are able to make this determination, 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 "III" at the end.

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

JWM/bhf

Ref: ID# 462114

Enc: Submitted documents

c: Requestor
(w/o enclosures)