



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

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

OR2012-18953

Dear Ms. Fillion and Ms. Thornton:

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# 473249 (C.A. File Nos. 12PIA0453, 12PIA055A, 12PIA0560).

The Harris County Institute of Forensic Sciences (the "institute") received requests from three requestors for a specified autopsy report. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.

We first note the submitted autopsy report falls within the scope of section 552.022(a) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Thus, the submitted autopsy report is subject to disclosure under section 552.022(a)(1). Although the institute seeks to withhold the information at issue under section 552.103 of the Government Code, that section is a discretionary exception that

¹ Although you also initially raised section 552.101 of the Government Code, you have provided no arguments for the applicability of that exception. Therefore, this decision does not address section 552.101. See Gov't Code §§ 552.301(e)(1)(A), .302.

protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not make information confidential for purposes of section 552.022(a)(1) of the Government Code. Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. As information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will determine whether that exception is applicable in this instance.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov't Code § 552.108(a)(2). A governmental body that claims section 552.108(a)(2) must demonstrate the information at issue is related to a criminal investigation that concluded in a final result other than a conviction or a deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide written comments explaining why claimed exception applies to information at issue). By its terms, section 552.108 of the Government Code applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that section 552.108 may be invoked by any proper custodian of information that relates to the underlying incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency has custody of information related to a concluded criminal 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 is related to a criminal case that has reached a conclusion other than a conviction or a deferred adjudication and a representation from a law enforcement entity that it wishes to have the information withheld.

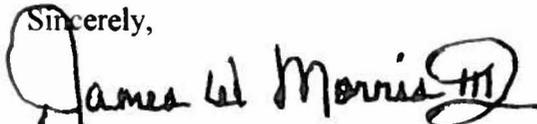
You seek to withhold the submitted information on behalf of the Pasadena Police Department (the “department”). You have submitted three affidavits from the department, each of which states the submitted information is related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. The affidavits also state the department opposes release of the submitted information. Based on the department's affidavits, we conclude the institute may withhold the submitted information on behalf of the department under section 552.108(a)(2) 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 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/bhf

Ref: ID# 473249

Enc: Submitted documents

c: 3 Requestors
(w/o enclosures)