



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2013

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2013-00334

Dear Ms. Clarke:

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# 475308.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for a specified autopsy file. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the medical examiner's office received the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the medical examiner's office is not required to release such information in response to this request.

Next, we note the responsive information contains a document signed by a justice of the peace that is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a). A document that has been filed with a court is expressly public under section 552.022(a)(17) of the Government Code and may not be withheld unless it is

confidential under the Act or other law. *See id.* § 552.022(a)(17). You raise section 552.108 of the Government Code for this information. However, this is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the medical examiner's office may not withhold the document at issue under section 552.108. As you raise no additional exceptions to disclosure for the document subject to section 552.022(a)(17), which we have marked, it must be released to the requestor.

Section 552.108(a)(1) 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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies to information held by a “law enforcement agency.” However, 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). Thus, 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 inform us the Office of the Attorney General’s Medicaid Fraud Control Unit (the “unit”) objects to disclosure of the remaining responsive information because its release would interfere with an ongoing criminal investigation. Based on your representation, we conclude the medical examiner’s office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the unit. *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, the medical examiner’s office must release the court-filed document, which we have marked, under section 552.022(a)(17) of the Government Code. The medical examiner’s office may withhold the remaining responsive 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 475308

Enc. Submitted documents

c: Requestor
(w/o enclosures)