



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2013

Ms. Cheryl Elliot Thornton
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2013-21406

Dear 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# 508542 (C.A. File No. 13PIA0503).

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

Initially, we note the submitted information consists of a completed report that is subject to section 552.022(a)(1) of the Government Code, which reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the institute no longer asserts this exception. See Gov't Code §§ 552.301, .302.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You assert this information is excepted from release under section 552.103 of the Government Code. However, section 552.103 is discretionary and does not make information confidential under the Act. *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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the institute may not withhold the submitted information under section 552.103. However, we will address your arguments under section 552.108. *See* Gov't Code § 552.022(a)(1).

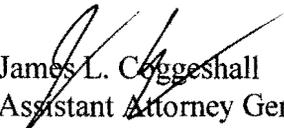
Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution 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 have submitted correspondence from the Humble Police Department (the “department”) objecting to disclosure of the submitted information. The department has submitted documentation showing the information at issue pertains to a criminal prosecution that resulted in conviction and the trial court set punishment at death. However, this documentation also shows the Texas Court of Criminal Appeals has vacated the defendant’s sentence and remanded the case for the trial court to conduct a new punishment hearing. The department asserts release of the requested information would interfere with the pending prosecution. Based on this representation, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, the institute may withhold the submitted information on behalf of the department pursuant to 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 508542

Enc. Submitted documents

c: Requestor
(w/o enclosures)