



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2014

Ms. Elizabeth Hanshaw Winn  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2014-13943

Dear Ms. Winn:

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# 532690.

The Travis County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to the death of a named individual. 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 representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the present request for information because it was created after the request was received.<sup>2</sup> This ruling does not

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

address the public availability of any information that is not responsive to the request, and the medical examiner's office need not release such information in response to this request.

Next, we understand the requestor to contend the medical examiner's office did not timely respond to his request for information. Pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general. *Id.* § 552.301(d). You state, and submit documentation showing, the medical examiner's office received the present request via e-mail after 5:00 p.m. on May 28, 2014, which we understand is after the medical examiner's office's business day concluded. As such, we find the medical examiner's office received the request on May 29, 2014. Thus, the medical examiner's office's ten-business-day deadline under section 552.301(d) was June 12, 2014. This office received from the medical examiner's office the information required by section 552.301(b) on June 9, 2014. Additionally, the medical examiner's office's letter to this office contains a notation the requestor was copied on the letter via e-mail on that same date. We understand the requestor to assert he was not properly notified of the medical examiner's office's request for a ruling from this office as required by section 552.301(d). Whether the medical examiner's office actually sent the requestor a copy of the medical examiner's office's letter to our office by June 12, 2014, is a question of fact. This office is unable to resolve factual disputes in the open records ruling process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. The submitted information reflects the requestor was copied on the initial letter to our office concurrent with the timely delivery to our office. Thus, we conclude the medical examiner's office complied with the requirements of section 552.301(d).

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). Where a non-law enforcement agency has custody of information relating to the pending case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration that the information relates to a pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You explain, and provide supporting correspondence from the Travis County District Attorney's Office (the "district attorney's office") stating, the district attorney's office objects to the release of the information at issue because it pertains to a pending prosecution. Based on these representations and our review, we conclude release of the responsive 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). Thus, we conclude the medical examiner's office may withhold the responsive information under section 552.108(a)(1) on behalf of the district attorney's office.<sup>3</sup>

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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 532690

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.