



January 20, 2000

Mr. James T. Jeffrey, Jr.  
Remington, Jeffrey & Hansen  
1306 West Abram Street  
Arlington, Texas 76013-1705

OR2000-0184

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131378.

The City of Mineral Wells (the "city"), which you represent, received a request for information pertaining to a named individual who died while incarcerated by the city. You indicate that you have released a portion of the responsive information, including the custodial death report. We assume by this representation that you have released the requisite portion of the report designated under Code of Criminal Procedure section 49.18. *See* Open Records Decision No. 521 (1989) (sections II through IV custodial death report confidential). Further, with exceptions that do not apply here, section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. If the department has such a report it must release it to the requestor.

You claim that a portion of the responsive information is excepted from disclosure under sections 552.101<sup>1</sup>, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As we understand your argument, you contend that the responsive information that consists of the products of a criminal investigation are excepted from public disclosure by section 552.108 of the Government Code. Section 552.108 (a)(2) of the Government Code excepts from public disclosure information held by a law enforcement agency or prosecutor 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. Information relating to a criminal investigation or prosecution which concluded in a result other than a conviction or deferred adjudication, may be withheld under section 552.108(a)(2). We note that the

---

<sup>1</sup>Although you allude to section 552.101, you do not indicate how this exception might apply to any specific information, and no such application is apparent on the face of the submitted information. Therefore, this exception is not addressed in this decision.

subject of the criminal investigation is deceased and therefore no prosecution of the underlying crime is possible. We conclude that information generated by this investigation may be withheld under section 552.108(a)(2) of the Government Code. We have marked the submitted information to indicate that which is subject to section 552.108.

Note, however that “basic” information about a crime or arrest is not excepted by section 552.108. Gov’t Code § 552.108(c). We consider “basic information” to be the “front page information” made public by *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (delineating types of information that must be released). Open Records Decision No. 127 (1976). Therefore, “basic” information must be released.

You also contend that all responsive information, other than that which relates to the criminal investigation, is excepted from disclosure by section 552.103 of the Government Code. You relate that this information was produced in response to anticipated litigation. Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ *ref’d n.r.e.*); Open Records Decision No. 551 at 4 (1990). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov’t Code § 552.103(c). You must meet both prongs of this test for information to be excepted under section 552.103(a).

You have supplied a copy of a letter from an attorney who represents the estate of the individual who died while in the city’s custody. This letter purports to comply with the notice requirements of Chapter 1 of the Civil Practices and Remedy Code, the Texas Tort Claims Act. We conclude that you demonstrated from the totality of circumstances that litigation related to the submitted information was reasonably anticipated at the time of the request. Therefore, responsive information not related to the criminal investigation may be withheld under section 552.103 of the Government Code.

In summary, the city must release the basic, “front page” information about the underlying crime or arrest, the public portion of the custodial death report, and the autopsy report should it exist. The remaining responsive information may be withheld.

This letter ruling is limited to the particular records 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 records or any other circumstances.


This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 131378

Encl. Submitted documents

cc: Mr. M. Adam Mauerhan  
Mauerhan & Associates, P.C.  
328 W. Main Street, Suite 3  
Azle, Texas 76020  
(w/o enclosures)