



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2017

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2017-02157

Dear Ms. Reingold:

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# 643728 (File No. ME-01-2016-569).

The Galveston County Medical Examiner's Office (the "medical examiner's office") received a request for the autopsy and toxicology reports pertaining to 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 information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor, in comments submitted to this office, contends the medical examiner's office did not comply with the requirements of section 552.301 of the Government Code because he states he previously submitted a request to the medical examiner's office for the same information. *Id.* § 552.301 (agency must request decision from attorney general's office within ten business days of receiving written request). The requestor asserts the medical examiner's office did not respond to his previous request for information in accordance with section 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the

information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). We note the need of a governmental body, other than the one that received the request for information, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 at 2-3 (1991). You state, and provide documentation demonstrating, the Galveston County Criminal District Attorney's Office (the "district attorney's office) objects to release of the information at issue under section 552.108 of the Government Code. Thus, we will consider whether the information at issue may be withheld under section 552.108 on behalf of the district attorney's office. Therefore, because we need not determine whether the medical examiner's office complied with section 552.301 in responding to a previous request, we need not address the requestor's claim.

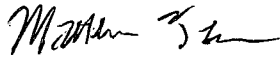
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also 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 the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

As noted above, the district attorney's office objects to disclosure of the submitted information because its release would interfere with an ongoing criminal investigation. Based on this representation, we conclude the medical examiner's office may withhold the information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. *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).

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,

A handwritten signature in black ink, appearing to read "Matthew Taylor".

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 643728

Enc. Submitted documents

c: Requestor
(w/o enclosures)