



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2017

Ms. Agatha Wade
Assistant Criminal District Attorney
Civil Section
Bexar County District Attorney's Office
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2017-24695

Dear Ms. Wade:

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# 687783 (File #6012, ME 17-0954).

The Bexar County Medical Examiner's Office (the "medical examiner's office") received a request for a specified toxicology report. The medical examiner's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the medical examiner's office claims and reviewed the submitted information.

Initially, we note, and the medical examiner's office acknowledges, the medical examiner's office did not comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *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 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code

can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because the medical examiner's office informs us, and provides documentation showing, the Comal County Criminal District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the medical examiner's office may withhold the submitted information under section 552.108 of the Government Code on behalf of the district attorney's office.

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.

The medical examiner's office states the district attorney's office has advised the medical examiner's office that the submitted information is related to an active criminal prosecution. The medical examiner's office informs us the district attorney's office objects to disclosure of the information at issue because its release would interfere with the prosecution. Based on these representations, we conclude the medical examiner's office may withhold the submitted 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 "Cindy Nettles", with a long horizontal flourish extending to the right.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/sb

Ref: ID# 687783

Enc. Submitted documents

c: Requestor
(w/o enclosures)