



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Ms. Kristen Lee
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-03220

Dear Ms. Lee:

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# 750760 (C.A. File No. 18PIA0927).

The Harris County Institute of Forensic Sciences (the "county") received a request for a specified autopsy report. You claim the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the county's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The county received the request for information on November 19, 2018. You inform us the county was closed for business on November 22 and 23, 2018. You also indicate the United States Post Office was closed on December 5, 2018; however, you do not state the county was closed for business on December 5, 2018. Accordingly, you were required to provide the information required by section 552.301(b) by December 5, 2018. However, the envelope in which the county provided the information required by section 552.301(b) was postmarked December 6, 2018. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the county failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 you inform us, and provide documentation showing, the Harris County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the county 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) 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). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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.

You state the district attorney's office has advised the submitted information relates to a pending criminal investigation and prosecution, and release of that information would interfere with the prosecution of the case. Based on these representations, we conclude the county 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 "Debbie K. Lee", with a stylized flourish at the end.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/som

Ref: ID# 750760

Enc. Submitted documents

c: Requestor
(w/o enclosures)