



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2019

Ms. Agatha Wade
Assistant District Attorney
Bexar County
101 W. Nueva
San Antonio, Texas 78205

OR2019-11716

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# 763238 (BCCDA 7183; ME 17-0826; SAPD 17077775).

The Bexar County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to a specified autopsy. 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.

Initially, we note, and you acknowledge, the medical examiner's office failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office with respect to each of the three requests. See Gov't Code § 552.301(b). 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 San Antonio Police Department (the “department”) 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 department.

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 the release of the information at issue 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, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of another law enforcement agency, the governmental body may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. The department objects to the release of the submitted information under section 552.108(a)(1) because it pertains to a pending criminal investigation, and release of the information would interfere with the investigation at issue. Based on this representation, we conclude the release of this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the medical examiner’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the department.

Finally, you also ask this office to issue a previous determination permitting the medical examiner’s office to withhold information subject to section 552.108(a)(1) of the Government Code without first seeking a ruling from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 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 "Ramsey Abarca", with a long horizontal flourish extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/mo

Ref: ID# 763238

Enc. Submitted documents

c: Requestor
(w/o enclosures)