



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2019

Ms. Deanne Lin
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-13510

Dear Ms. Lin:

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# 773756 (C.A. File No. 19PIA0276).

The Harris County Institute of Forensic Sciences (the "county") received a request for the autopsy report, toxicology report, and investigative report related to a named decedent. 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 must address the county's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). The county received the request for information on April 12, 2019. We note this office does not count the date the request was received for the purpose of calculating a governmental body's deadlines under the Act. You do not inform us the county was closed for business on any of the days at issue. Thus, the county's ten-business-day deadline was April 26, 2019. However, the envelope in which you submitted the information under section 552.301(b) bears a meter mark of April 29, 2019. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Consequently, we find the county failed to comply with 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 City of Alvin (the "city") 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 city.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). Where a governmental body has custody of information relating to a 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 law enforcement agency's case and a representation from the law enforcement agency that it wishes to have the information withheld. The city objects to the release of the submitted information because it relates to a concluded criminal investigation conducted by the city's police department that did not result in conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) is applicable to the submitted information. Thus, the county may withhold the submitted information under section 552.108(a)(2) of the Government Code on behalf of the city.

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 "Tim Neal". The signature is stylized with a large initial "T" and a cursive "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 773756

Enc. Submitted documents

c: Requestor
(w/o enclosures)