



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2019

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2019-18581

Dear Ms. Sheely:

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# 774244.

The Travis County Medical Examiner's Office (the "medical examiner's office") received three requests from different requestors 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 representative sample of information.¹ We have also received and considered comments from the first requestor and an attorney for the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the first requestor's assertion that the medical examiner's office did not comply with section 552.301 of the Government Code in requesting this ruling. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

See id. § 552.301(b). The medical examiner's office states it received the written request for information at issue on April 29, 2019. The requestor at issue states the medical examiner's office received the request at issue at an earlier date. Whether the medical examiner's office received the request for information on April 29, 2019, or an earlier date is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). We must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, we must accept the assertion of the medical examiner's office that it received the request for information at issue on April 29, 2019. Consequently, the ten-business-day deadline under section 552.301(b) for the request at issue was May 13, 2019. The medical examiner's office hand-delivered to this office the information required by section 552.301(b) on May 2, 2019. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we conclude the medical examiner's office complied with the requirements of section 552.301 of the Government Code. Accordingly, we will address arguments of the medical examiner's office to withhold the information at issue.

Next, we address the argument from the first requestor's attorney that the submitted autopsy report should be released to his client pursuant to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs medical records. Occ. Code §§ 151.001-168.202. We note, however, section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. *See id.* § 159.001(3). Under this definition, a deceased person cannot be a patient under section 159.002 of the MPA. *See* Open Records Decision No. 487 (1987), 370 (1983), 343 (1982). Thus, the MPA is applicable only to records related to a person who was alive at the time of diagnosis, evaluation, or treatment to which the records pertain. As the information at issue consists of records related to a person who was deceased at the time of the evaluation to which the records pertain, the MPA is inapplicable.

We also address the assertion from the first requestor's attorney that his client has a right of access to the submitted autopsy report pursuant to section 74.051(d) of the Civil Practice and Remedies Code. Section 74.051 pertains to notice requirements for health care liability claims and provides, in part, as follows:

(d) All parties shall be entitled to obtain complete and unaltered copies of the patient's medical records from any other party within 45 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization in the form required by Section 74.052 executed by the claimant herein shall be considered compliance by the claimant with this subsection.

Civ. Prac. & Rem. Code § 74.051(d). Thus, section 74.051(d) provides parties to a health care liability claim shall obtain a patient's medical records from any other party. Upon review, we find the first requestor's attorney has failed to demonstrate his client is a party to a health care liability claim for the purposes of section 74.051(d) of the Civil Practice and Remedies Code. Accordingly, we find section 74.051(d) is inapplicable to the information at issue. Thus, we will consider the medical examiner's arguments against disclosure.

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 governmental body has custody of information relating to a 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, and provide documentation demonstrating, the Austin Police Department (the "department") objects to release of the submitted information because it relates to an open criminal investigation. However, one of the requestors asserts the submitted information relates to an investigation that is now closed. Whether the submitted information relates to an ongoing criminal investigation is a question of fact. *See ORDs 592 at 2, 552 at 4, 435 at 4*. As mentioned above, this office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See ORD 552 at 4*. Thus, based on the representations made by the medical examiner's office and the department, we conclude release of the information at issue 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 (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). Thus, 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.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/be

Ref: ID# 774244

Enc. Submitted documents

c: 2 Requesters
(w/o enclosures)