



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2005

Mr. John C. West
OIG General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
P. O. Box 13084
Austin, Texas 78711

OR2005-07392

Dear Mr. West:

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# 230381.

The Texas Department of Criminal Justice ("the department") received a request for: (1) a specified investigation of the Office of the Inspector General (the "OIG") concerning the requestor, a department employee, (2) a specified use of force report concerning a named offender, (3) each grievance filed by the named offender, (4) the cover sheet to a specified investigation, and (5) a specified investigation concerning the requestor and another named offender.

You state you have released basic information from the investigation responsive to part (1) of the request, investigation number UF.14.0452.04. You also state that you have released all but the last two pages of the report responsive to part (2) of the request, report number MA-04970-11-03. However, you claim that the balance of the investigation and the last two pages of the report are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code. You state part (3) of the request has been referred to the another office in the department.¹ You state the department has no

¹ To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

information responsive to parts (4) and (5) of the request.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Furthermore, section 552.108(a)(1) is generally not applicable to the records of an internal investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to Gov’t Code § 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You explain the ongoing administrative investigation at issue in this instance, number UF.14.0452.04, may result in the filing of criminal charges. Based upon your representations and our review of the investigation, we conclude that the release of this administrative investigation at this time 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore agree that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). You state that the department has previously released the basic information from investigation UF.14.0452.04. Thus, the department may withhold the remainder of this investigation from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of this remaining information that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

² The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

You also seek to withhold the last two pages of report number MA-04970-11-03 under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the department and provides in relevant part the following:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The last two pages of report number MA-04970-11-03 consists of information about an inmate confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable to this information. Therefore, the department must withhold the last two pages of report number MA-04970-11-3 under section 552.134(a) of the Government Code.

In summary, except for basic information, the department may withhold investigation number UF.14.0452.04 pursuant to section 552.108. The department must withhold the last two pages of report number MA-04970-11-03 under section 552.134.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 230381

Enc. Submitted documents

c: Mr. Clifton Mattox
c/o Mr. John C. West
OIG General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
P. O. Box 13084
Austin, Texas 78711
(w/o enclosures)