



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2008

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

OR2008-13101

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# 322654.

The Texas Department of Criminal Justice (the "department") received a request for the investigative file related to a deceased inmate. You state that the department will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted investigative file.

Initially, you inform us that a portion of the submitted information is the subject of a previous determination. This office issued Open Records Letter No. 2004-6370 (2004), which serves as a previous determination under section 552.301(a) of the Government Code for the department with respect to prison unit shift rosters. In that ruling, we concluded that the department may withhold shift rosters for its prison units under section 552.108(b)(1) of the Government Code without the necessity of requesting a ruling from this office. Because the law, facts, and circumstances surrounding that ruling do not appear to have changed, we conclude that the department may continue to rely on Open Records Letter No. 2004-6370 in withholding the submitted shift rosters. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and

circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

We also note that a portion of the remaining information in the investigative file was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-08204 (2008). In Open Records Letter No. 2008-08204, we ruled that, with the exception of basic information, the department may withhold the investigative file pertaining to the deceased inmate under section 552.108(a)(1) of the Government Code. Thus, to the extent the submitted investigative file contains the same information we previously ruled upon, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determination and withhold or release the requested information in accordance with Open Records Letter No. 2008-08204. *See* ORD 673 (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

To the extent the submitted information was not previously ruled upon, the department claims that the remaining submitted information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 reasonably 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).

The department states that the remaining information relates to an ongoing criminal investigation. Based on this representation and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to this information. *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 note that 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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, which the department states it is releasing, the

department may withhold the remaining information it has submitted under section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, the department may continue to rely on Open Records Letter Nos. 2004-6370 and 2008-08204 as previous determinations and withhold or release the submitted information we previously ruled on in accordance with those rulings. With the exception of basic information, the department may withhold the remaining information it has submitted under section 552.108(a)(1) of the Government Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>1</sup>As our ruling is dispositive, we do not address the remaining arguments against disclosure of the submitted information.

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 Office of the Attorney General 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. 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 322654

Enc. Submitted documents

c: Mr. Christopher Hill  
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(w/o enclosures)