



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2010

Mr. John C. West  
OIG General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2010-00066

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# 366214.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for all materials pertaining to a specified case. You state that some of the requested information, which is included as Exhibit B, has been released to this requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note that you have redacted information from the documents that you released pursuant to section 552.147 of the Government Code and a previous determination issued by this office. *See* Open Records Letter No. 2005-01067 (2005) (authorizing the department to withhold information relating to its current or former employees under section 552.117(a)(3) without necessity of requesting attorney general decision); Gov't Code § 552.147(b) (authorizing governmental body to redact living person's social security number from public release under section 552.147 without necessity of requesting attorney general decision under Act). We note that the information you redacted includes the

requestor's client's social security number. In this instance, the requestor has a right of access to her client's social security number and it may not be withheld from her either under section 552.147 or section 552.117(a)(3) of the Government Code. *See generally id.* § 552.023(b).

You claim that the information in Exhibit C is excepted from disclosure under section 552.108(a)(1) 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). Generally, 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). You state the requested information relates to a pending criminal investigation and prosecution. However, the requestor argues that the case was no-billed by the grand jury and, thus, the matter is no longer pending. Whether or not the requested information relates to a pending criminal investigation is a question of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986)*. Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See Open Records Decision No. 552 at 4 (1990)*. Thus, based on the department’s representation, we accept the department’s assertion that the submitted information relates to a pending criminal investigation. Accordingly, we conclude that 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 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

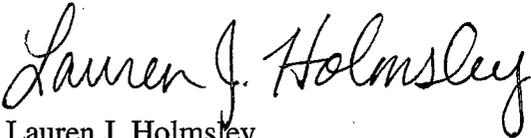
As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See 531 S.W.2d at 186-88*. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which the department states they have released, the department may withhold the submitted information under section 552.108(a)(1) of the

Government Code.<sup>1</sup> As our ruling is dispositive, we need not address the department's remaining argument against disclosure.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/sdk

Ref: ID# 366214

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note that the requestor has a special right of access to the information being released in this instance. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.