



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2010

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

OR2010-01229

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# 368296 (OIG ORR File #OR-2009-00307).

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for statements, videotapes, polygraphs, conversations, evidence, notes, and documentation pertaining to file #SC.15.00170.2009.BY. You state you will release some requested information from the responsive file with information redacted pursuant to the previous determination issued to the department in Open Records Letter No. 2005-1067 (2005)¹ and section 552.147 of the Government Code. You also state the

¹Open Records Letter No. 2005-1067 authorizes the department to generally withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (listing elements of first type of previous determination under section 552.301(a)). However, because the requestor has a right of access to information pertaining to her that would ordinarily be withheld on the basis of privacy, the OIG may not withhold the requestor's social security number under section 552.117(a)(3) or section 552.147. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

OIG plans to release basic information to the requestor. *See* Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to the records of an internal affairs 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 section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). In this instance, the submitted file pertains to an ongoing administrative investigation of a department employee's alleged violation of a department rule of conduct. You state, however, that the OIG believes there may be evidence of criminal culpability on the part of this employee or others which could lead to indictments and criminal prosecution. You also state release of anything other than basic information at this time could compromise the integrity of the investigation efforts and facilitate the commission of a crime. Based on your representations and our review, we determine release of the submitted 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. 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). Accordingly, with the exception of basic information you state will be released, the OIG may withhold file #SC.15.00170.2009.BY pursuant to section 552.108(a)(1) of the Government Code.³

²Although you also mention chapter 159 of the Occupations Code, you have provided no arguments explaining how any portion of that chapter is applicable in this instance. Therefore, we assume you no longer assert section 552.101 of the Government Code in conjunction with chapter 159 of the Occupations Code for the submitted information. *See* Gov't Code §§ 552.301, .302.

³As our ruling is dispositive, we need not address your 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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 368296

Enc. Submitted documents

cc: Requestor
(w/o enclosures)