



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2012

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-00374

Dear Ms. Armstrong:

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# 442883 ORR# 2011-9886).

The Dallas Police Department (the "department") received a request for information pertaining to a specified internal affairs investigation of the requestor. You state the department has released some of the requested information, but claim some of the submitted 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 representative sample of information.¹

You inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-10304 (2011). In Open Records Letter No. 2011-10304, we determined the department may withhold some of the requested information under section 552.108(a)(1) of the Government Code, but must release the remaining information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent

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.

the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2011-10304 as a previous determination and withhold or release the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (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 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 is not subject to Open Records Letter No. 2011-10304, we will address your 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 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). The department raises section 552.108(a)(1) for the information it has marked in the submitted internal affairs investigation. We note section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See 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). However, you explain the information you have marked in the submitted internal affairs investigation relates to a pending criminal investigation. Based upon your representations and our review, we conclude that release of the information you have marked in the submitted internal affairs investigation 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).

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*, and it includes the description of the complainant. *See id.* at 186-87. We note some of the information you have marked under section 552.108 consists of basic information. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the information you

have marked under section 552.108(a)(1).² The department must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 442883

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As we are able to resolve this matter under section 552.108, we do not address your other arguments to withhold this information.