



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2012

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

OR2012-06145

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# 452200 (OIG Open Records 2012-00031).

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for two categories of information pertaining to a specified incident. You state the department does not have records responsive to some of the requested information.¹ You inform us the department will release some of the requested information. However, in doing so you state the department will redact certain addresses, telephone numbers, social security numbers, and personal family information pursuant to sections 552.117 and 552.147(b) of the Government Code, as well as the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code. Further, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act. *See Gov't Code* § 552.147(b).

Initially, you inform us that some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-18554 (2011). In this prior ruling, we ruled that, with the exception of basic information that must be released pursuant to section 552.108(c) of the Government Code, the department could withhold the information at issue under section 552.108(a)(1) of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the department may rely on Open Records Letter No. 2011-18554 as a previous determination and release or withhold the information subject to that ruling in accordance with it.³ *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 encompassed by the prior ruling, we will consider your arguments against disclosure.

Section 552.108(a) 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: (1) 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 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and 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). You state the information at issue relates to an open criminal investigation. Based upon your representation and our review, we conclude that release of the information at issue 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). Thus, we determine section 552.108(a)(1) is applicable to the information at issue.

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 186-87; Open Records Decision No. 127 (1976) (summarizing types of information made public by

³As our ruling for this information is dispositive, we need not address your arguments against its release.

Houston Chronicle). Thus, with the exception of basic information, which you state will be released, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.⁴

In summary, the department may rely on Open Records Letter No. 2011-18554 as a previous determination and release or withhold the information subject to that ruling in accordance with it. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 452200

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure. We note basic information under section 552.029(8) of the Government Code corresponds to the basic information that may not be withheld under section 552.108 of the Government Code. *See* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d at 186-187; ORD 127 at 3-4. We also note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).