



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-12092

Dear Mr. Weir:

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# 460974 (COSA File No. W007555).

The City of San Antonio (the "city") received a request for all documents relating to a specified incident that occurred on a particular date involving the city's police department and a named individual. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments received from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the responsive information was previously the subject of two requests for information, in response to which this office issued Open Records Letter Nos. 2012-05227 (2012) and 2012-07800 (2012). In those rulings, we held that with the exception of basic information, the city may withhold the information at issue under section 552.108(a)(2) of the Government Code. As we have no indication the law, facts, and circumstances on which those prior rulings were based have changed, the city must continue to rely on those prior rulings as previous determinations and withhold the identical information in accordance with Open Records Letter Nos. 2012-05227 and 2012-07800. *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 information is or is not excepted from disclosure). However, because some of the submitted information is not encompassed by the previous decisions, we will address your argument.

We note the submitted information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that with the exception of any portion of the custodial death report the Office of the Attorney General (“OAG”) determines is privileged, the OAG shall make the report public. *See* Crim. Proc. Code art. 49.18(b). The format of the report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The OAG has determined the four-page report and summary must be released to the public but any other documents submitted with the revised report are confidential under article 49.18(b). Therefore, the city must release the custodial death report we have marked pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the requested information relates to a closed investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree that section 552.108(a)(2) is applicable to the remaining information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the city may continue to rely on Open Records Letter Nos. 2012-05227 and 2012-07800 as previous determinations and withhold or release the information we previously ruled on in accordance with those prior rulings. The city must release the custodial death report and summary pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 460974

Enc. Submitted documents

c: Requestor
(w/o enclosures)