



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2013

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2013-11113

Dear Ms. Cost:

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# 491808 (DPS PIR # 13-1480).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified incident. You state the department has released some of the requested information. You claim 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 information, which we understand constitutes a representative sample.¹

Initially, you state 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. 2012-09654 (2012). In Open Records Letter No. 2012-09654, we ruled the following: (1) with the exception of the report pertaining to the deceased individual we marked, the department must withhold the information it marked under section 552.101 of the Government Code in

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

conjunction with section 773.091 of the Health and Safety Code; (2) the department may withhold the information it marked pertaining to the department's pending investigation under section 552.108(a)(1) of the Government Code; (3) the department must withhold the information we marked under section 552.117(a)(4) of the Government Code; and (4) the department must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling were based have changed as to the information subject to section 552.101 in conjunction with section 773.091 or section 552.117(a)(4), the department must continue to rely on Open Records Letter No. 2012-09654 with respect to the information subject to section 552.101 in conjunction with section 773.091 and section 552.117(a)(4) as a previous determination and withhold the information at issue 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you state circumstances have changed regarding the information previously withheld under section 552.108 because the department's investigation into the matter at issue has since concluded. Upon review, we agree circumstances have changed and the department may not rely upon Open Records Letter No. 2012-09654 as a previous determination as to the information previously withheld under section 552.108. Accordingly, we will consider your submitted arguments against disclosure of this and the remaining information.

You seek to withhold the information at issue under section 552.108 of the Government Code. We note, however, some of the information at issue was previously released in accordance with Open Records Letter No. 2012-09654, as discussed above. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, to the extent any portion of the information at issue was previously released in accordance with Open Records Letter No. 2012-09654, the department may not now withhold such information under section 552.108. As you raise no further exceptions against disclosure of this information, it must be released. To the extent the information at issue was not previously released in accordance with the prior ruling, we will consider your arguments under section 552.108.

We will also consider your arguments under sections 552.101 and 552.108 of the Government Code for the submitted information that was not at issue in the previous ruling.

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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 information at issue relates to a criminal case that is pending prosecution by the El Paso County District Attorney’s Office (the “district attorney’s office”) in the 41st District Court. You have submitted correspondence from the district attorney’s office objecting to release of the information at issue on the basis of the pending prosecution. Based upon your representation and our review, we conclude 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, section 552.108(a)(1) is applicable to the information at issue.

As you acknowledge, 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 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page and arrest offense information, which you state the department has released, the department may withhold the information at issue that has not been previously released under section 552.108(a)(1).²

In summary, the department must continue to rely on Open Records Letter No. 2012-09654 with respect to the information subject to section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code and section 552.117 of the Government Code as a previous determination and withhold the information at issue in accordance with that ruling. With the exception of the basic information, the department may withhold the information at issue that has not been previously released under section 552.108(a)(1) of the Government Code. The department must release the remaining information.

²As our ruling is dispositive of this information, we need not address your remaining argument against its 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 491808

Enc. Submitted documents

c: Requestor
(w/o enclosures)