



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 9, 2013

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

OR2013-11623

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# 493144 (TxDPS PIR# 13-1673).

The Texas Department of Public Safety (the "department") received a request for (1) any documents pertaining to the Texas Rangers' investigation of the requestor, (2) evidence of the amount of time the Rangers have spent on the investigation of the requestor, (3) any complaints received by the department pertaining to a specified ranger or any investigation that ranger has conducted in the last five years, (4) the personnel file of the named ranger, including any disciplinary action taken against the ranger in the last five years, (5) any documents pertaining a separate specified investigation, and (6) any documents pertaining to an investigation of the requestor's client. You indicate the department will release some information responsive to items three, four and five of the request, upon payment of charges, with redactions pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863 (2010).<sup>1</sup> You further indicate the department previously responded to item two of the requestor's request in response to a prior request for information. *See* Gov't Code § 552.232 (prescribing procedures for response to repetitive or redundant requests for information). You claim 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 representative sample of information.

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<sup>1</sup>Open Records Letter No. 2010-12863 serves as a previous determination authorizing the department to withhold certain personnel records of commissioned officers of the department under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. *See* Gov't Code § 411.00755(b)(1)-(12), (c); *see also id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

Initially, we note you have not submitted any information responsive to item six of the request. Although you state the department submitted a representative sample of information, we find the submitted information is not representative of the information requested in item six. Please be advised this open records letter applies only to the type of information you have submitted for our review. Therefore, this letter ruling 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. *See Gov't Code* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent any information responsive to item six of the request existed when the present request was received, we assume it has been released.<sup>2</sup> If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.022(a)(17) requires disclosure of “information that is also contained in a public court record,” unless the information is expressly confidential under the Act or other law. *Gov't Code* § 552.022(a)(17). In this instance, the submitted information includes court-filed documents, which we have marked. This information is expressly public under section 552.022(a)(17), and the department must release it unless it is confidential under the Act. You raise section 552.108 of the Government Code for this information. However, section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold the court-filed documents under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of this information, it must be released. However, we will consider the applicability of section 552.108 to the information not subject to section 552.022.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Gov't Code* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *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 submitted information relates to ongoing investigations, and its release would interfere with the investigation and prosecution of the cases. Based upon these representations, we conclude section 552.108(a)(1) is applicable and the release of the remaining information would interfere with the detection, investigation, or prosecution of

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<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

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*. See 531 S.W.2d at 186-88; see also 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 offense and arrest information, you may withhold the remaining information from disclosure based on section 552.108(a)(1) of the Government Code.

In summary, the department must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 493144

Enc. Submitted documents

c: Requestor  
(w/o enclosures)