



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2013

Ms. Evelyn W. Njuguna
Staff Attorney
Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2013-14145

Dear Ms. Njuguna:

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# 496349 (ORU No. 13-3106).

The Houston Police Department (the "department") received a request for information pertaining to nine specified incidents involving a named individual. You state you will release a portion of the responsive 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 information.

Initially, you inform us some of the information in Exhibit 5 was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2013-06447 (2013). In the previous ruling, we concluded with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Thus, the department may continue to rely on Open Records Letter No. 2013-06447 as a previous determination and withhold or release the identical information in accordance with that ruling.¹ 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

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

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). However, because the remaining information is not encompassed by the previous determination, we will address your arguments against disclosure of this information.

Next, we note the remaining information in Exhibit 5 includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides the attorney general shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Crim. Proc. Code art. 49.18(b). The report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The Office of the Attorney General 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). Although you claim the submitted custodial death report and summary are protected by section 552.108 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department must release this information, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

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 claiming section 552.108(a)(1) 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 information in Exhibit 2 pertains to inactive criminal investigations that are pending additional leads. You explain the statute of limitations of the offenses at issue in Exhibit 2 have not run, and the investigations may be reactivated once additional leads are developed. Based on your representations and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime, and thus, section 552.108(a)(1) is applicable to this information. *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).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state the information in Exhibits 3, 4, 6, 7, and the remaining information in Exhibit 5 pertain to closed criminal

investigations that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude section 552.108(a)(2) is applicable to the information at issue.

We note basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such 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 considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the information in Exhibit 2 under section 552.108(a)(1) of the Government Code and the information in Exhibits 3, 4, 6, 7, and the remaining information in Exhibit 5 under section 552.108(a)(2) of the Government Code.

In summary, the department may rely on Open Records Letter No. 2013-06447 as a previous determination and withhold or release the identical requested information in accordance with that ruling. The department must release the custodial death report we have marked pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, which must be released, the department may withhold the information in Exhibit 2 under section 552.108(a)(1) of the Government Code and the information in Exhibits 3, 4, 6, 7, and the remaining information in Exhibit 5 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.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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 496349

Enc. Submitted documents

c: Requestor
(w/o enclosures)