



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2014

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

OR2014-14015

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# 532551.

The Texas Department of Criminal Justice's Office of the Inspector General (the "office") received a request for all records and reports related to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.117, 552.1175, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note we have marked some of the submitted information as not responsive to the present request for information because it was created after the instant request for information was received.¹ This ruling does not address the public availability of any

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic 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), 362 at 2 (1983).

information that is not responsive to the request, and the office need not release such information in response to this request.

Next, we note the responsive information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides, 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). Although the office claims the submitted custodial death report is excepted from disclosure under sections 552.103, 552.108, and 552.134 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). Therefore, the office must release the submitted custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

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). You state the submitted information pertains to an open and pending criminal investigation by the office. You state there may be evidence of criminal culpability on the part of one or more of the involved individuals, that could, if confirmed, lead to indictments and criminal prosecution of those individuals, and release of the information could compromise the integrity of the investigation efforts. Further, you state release of anything other than basic information at this time could compromise the investigative process. Based on these representations and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).“ Therefore, we agree section 552.108(a)(1) of the Government Code is applicable to the remaining information.

However, we note, and you acknowledge, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with

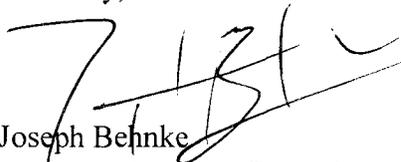
the exception of the basic information, the office may withhold the remaining information under section 552.108(a)(1).²

In summary, the office must release the submitted custodial death report, which 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 office 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, 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 532551

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.