



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2016

Mr. Shan Rutherford
Counsel for the City of Bastrop
Law Offices of J.C. Brown, P.C.
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2016-13856

Dear Mr. Rutherford:

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# 614640.

The City of Bastrop (the "city"), which you represent, received a request for incident reports, affidavits of fact, photographs, closed record reports, supplemental documents, and any other official police records related to three separate specified incidents involving named individuals and occurring on specified dates. You state you have no information responsive to a portion of the request.¹ You state the city will provide some of the requested information to the requestor. You claim the submitted information, with the exception of basic 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 portions of the submitted information were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-08355 (2015). In that ruling, we determined, except for basic information, the city may withhold the information at issue under section 552.108(a)(2) of the Government Code.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

However, the city informs us the Bastrop County District Attorney's Office (the "district attorney's office") now classifies the submitted incident at issue in the prior ruling as an "active" criminal investigation. As such, we find the facts or circumstances on which Open Records Letter No. 2015-08355 were based have changed. Therefore, the city may not rely on Open Records Letter No. 2015-08355 as a previous determination and may not withhold any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (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 that information is or is not excepted from disclosure). Accordingly, we will consider your argument against disclosure of the submitted information.

Section 552.108(a)(1) 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(a)(1) must 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 district attorney's office has informed the city the submitted information pertains to active criminal investigations. Based upon this representation, we conclude the release of the submitted information 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 submitted information.

As 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-188; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity and description of the complainant.² ORD 127 at 3-4. Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

² Pursuant to *Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication), the identities of the victims are not subject to privacy in this instance because they are a matter of public record and are found in published articles.

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, appearing to read "Ian Lancaster", written in a cursive style.

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 614640

Enc. Submitted documents

c: Requestor
(w/o enclosures)