



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2016

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

OR2016-25075

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# 633999 (ORR# 2016-00156).

The Texas Department of Criminal Justice (the "department") received a request for information related to eighteen officers who were disciplined in the death of a named inmate. You state the department will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.¹ You also state the department will redact certain information pursuant to section 552.1175 of the Government Code.² You further state the department will withhold social security numbers

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

²Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See* Gov't Code § 552.1175(b), (f).

pursuant to section 552.147(b) of the Government Code.³ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-13515 (2016). In that ruling, we determined with the exception of the custodial death report, which must be released pursuant to article 49.18(b) of the Code of Criminal Procedure, and the basic information, which must be released, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code. You state there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the department may rely on Open Records Letter No. 2016-13515 as a previous determination and withhold or release the identical information 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information was not responsive to the prior request, we will consider your arguments against its disclosure.

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 explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You state the submitted information relates to a pending criminal investigation or prosecution. Based upon your representation, we conclude release of the remaining information will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531

³Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

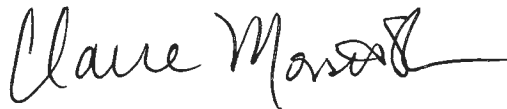
S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the department may withhold or release that information in accordance with the previous determination issued in Open Records Letter No. 2016-13515. 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, 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 "Claire Morris Sloan", with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 633999

Enc. Submitted documents

c: Requestor
(w/o enclosures)