



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2017

Mr. Nick Lealos
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2017-22291

Dear Mr. Lealos:

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# 683481 (ORR No. 17-6253).

The Texas Department of Public Safety (the "department") received a request for all information pertaining to a named inmate. 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.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

(a) The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

manner of death, and shall issue a death certificate. The records may not be withheld, subject to a discretionary exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

(1) under a subpoena or authority of other law; or

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

(b) Under the exception to public disclosure provided by [s]ubsection (a), a governmental body may withhold a photograph or x-ray described by [s]ubsection (a) without requesting a decision from the attorney general under [s]ubchapter G, Chapter 552, Government Code. This subsection does not affect the required disclosure of a photograph or x-ray under [s]ubsection (a)(1) or (2).

Crim. Proc. Code art. 49.25, § 11. We note the submitted autopsy photographs pertain to an individual who died while in the custody of law enforcement. Photographs taken of the body of a person who died while in the custody of law enforcement are public and not confidential. *Id.* § 11(a)(2). Although the department seeks to withhold these photographs under 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). Therefore, the department must release the submitted autopsy photographs pursuant to section 11(a)(2) of article 49.25 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 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 remaining information pertains to an open criminal case. Based on your representation, we conclude the release of the information at issue 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). Therefore, we agree section 552.108(a)(1) is applicable to the remaining information.

However, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186–87. *See* Open Records Decision No. 127 at 3-4

(1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which the department must release, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the submitted autopsy photographs pursuant to section 11(a)(2) of article 49.25 of the Code of Criminal Procedure. With the exception of basic information, which the department must release, 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/gw

Ref: ID# 683481

Enc. Submitted documents

c: Requestor
(w/o enclosures)