



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2017

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

OR2017-23958

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# 684133.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified incident. The department states it does not have some of the requested information.¹ The department states it will release some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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 release of the requested

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *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 investigation that is purely administrative in nature and that 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, 525-26 (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). The department explains the submitted information pertains to an open criminal investigation. The department states 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, the department states release of anything other than basic information could compromise the integrity of the investigation process. Based upon this representation and our review, we conclude 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).

However, 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 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which the department must release, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

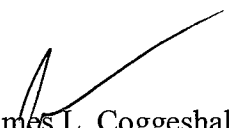
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²As our ruling is dispositive, we do not address the remaining arguments of the department, except to note basic information is not excepted from disclosure under section 552.103 or 552.134 of the Government Code. *See* Open Records Decision No. 597 (1991); *see also* Gov't Code § 552.029(8) (basic information regarding the death of an inmate in custody is not excepted under section 552.134).

[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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sb

Ref: ID# 684133

Enc. Submitted documents

c: Requestor
(w/o enclosures)