



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2018

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2018-00504

Dear Ms. Harden:

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# 692804 (PIR No. 17-47968).

The Office of the Attorney General (the "OAG") received a request for information pertaining to specified facilities and eleven named individuals. The OAG states it will release some information. Additionally, the OAG states it will withhold most of the responsive information pursuant to Open Records Letter No. 2012-08540 (2012).¹ See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). The OAG claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We

¹In Open Records Letter No. 2012-08540 this office issued the OAG a previous determination authorizing it to withhold information it compiles in connection with a Medicaid fraud investigation under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code without the need of requesting a ruling from this office when requests for such information are not made by individuals or entities who are authorized to obtain such information under chapter 531 of the Government Code.

have considered the claimed exception and reviewed the submitted representative sample of information.²

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(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). The OAG asserts Exhibit B-1 relates to an active criminal investigation being conducted by the OAG’s Medicaid Fraud Control Unit (“MFCU”) and release of the information at issue would interfere with the pending investigation. Based on this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to Exhibit B-1.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The OAG states Exhibit B-2 pertains to a concluded criminal investigation conducted by the OAG’s MFCU. The OAG explains the criminal investigation is closed and no charges were filed. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to Exhibit B-2.

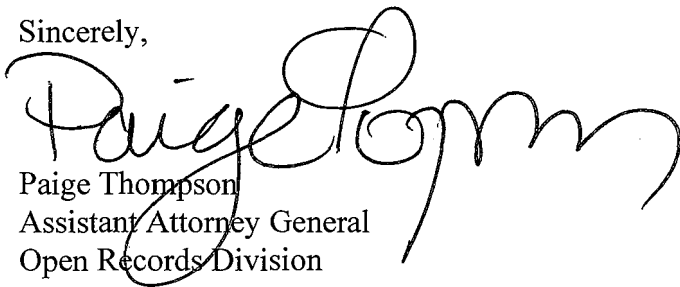
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which the OAG states it has released, the OAG may withhold Exhibit B-1 under section 552.108(a)(1) of the Government Code and Exhibit B-2 under section 552.108(a)(2) of the Government Code.

²We 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.

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 "Paige Thompson". The signature is written in a cursive style with a large, looping initial "P".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 692804

Enc. Submitted documents

c: Requestor
(w/o enclosures)