



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2019

Ms. Ellen Webking
Open Records Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2019-09152

Dear Ms. Webking:

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# 758012 (TDI No. R003022).

The Texas Department of Insurance (the "department") received a request for all records pertaining to a specified investigation. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1085 of the Government Code. Additionally, the department states release of the information at issue may implicate the proprietary interests of third parties. Accordingly, the department states it notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions the department claims and reviewed the submitted representative sample of information.¹

Initially, we note the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-03609 (2019). In that ruling, we determined with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the

¹We assume that 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.

Government Code. We have no indication there has been any 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. 2019-03609 as a previous determination and withhold or release the identical information in accordance with that ruling.² 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). However, to the extent the information in the instant request is not identical to the information ruled upon by this office in Open Records Letter No. 2019-03609, we will address the department's arguments against disclosure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. See *id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states the submitted information pertains to a criminal investigation conducted by the department's State Fire Marshal's Office (the "fire marshal's office") that concluded in a result other than conviction or deferred adjudication. We note, for purposes of section 552.108, the fire marshal's office is considered a law enforcement unit. See *id.* § 417.006. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

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 basic "front-page" offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which the department states it has released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.³

In summary, 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. 2019-03609 as a previous determination and withhold or release the

²In this instance, as we are able to make this determination, we need not address the department's arguments against disclosure of this information.

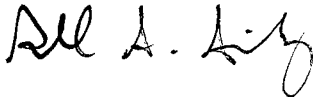
³As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of the information at issue.

identical information in accordance with that ruling. To the extent the information in the instant request is not identical to the information ruled upon by this office in Open Records Letter No. 2019-03609, with the exception of basic information, which the department states it has released, the department may withhold the submitted information under section 552.108(a)(2) 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 758012

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 4 Third Parties
(w/o enclosures)