



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2020

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

OR2020-18046

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# 836037 (ORR# 2020.00080).

The Office of the Inspector General of the Texas Department of Criminal Justice (the "OIG") received a request for information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, 552.134, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, you inform us 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. 2019-25966 (2019). In that ruling, we determined the OIG must release the custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure and, with the exception of basic information, which must be released, the OIG may withhold the remaining information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the OIG must continue to rely on Open Records Letter No. 2019-25966 as a previous determination and withhold or release the information at issue 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 information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information.

Next, we note some of the submitted information consists of grand jury subpoenas and information obtained through grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the OIG holds the information at issue solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the OIG is not required to release that information in response to the instant request. To the extent the OIG holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address 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: (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 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 submitted information relates to an ongoing criminal investigation, and release of this information would interfere with the investigation and prosecution of the case. Based upon 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 (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). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See* Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the OIG may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

In summary, the OIG must continue to rely on Open Records Letter No. 2019-25966 as a previous determination and withhold or release the information at issue in accordance with that ruling. To the extent the OIG holds the information at issue solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the OIG is not required to release that information in response to the instant request. With the exception of basic information, which must be released, the OIG may withhold the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 836037

Enc. Submitted documents

c: Requestor
(w/o enclosures)