



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2022-09833

Dear Mr. Kopp:

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# 940043 (COSA File No. W424406).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident. You state the city will withhold some of the requested information in accordance with Open Records Letter No. 2021-13946 (2021). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information includes custodial death reports. Article 49.18(b) of the Code of Criminal Procedure provides that, with the exception of any portion of the custodial death report the Office of the Attorney General (the "OAG") determines is privileged, the OAG shall make the report public. *See* Crim. Proc. Code art. 49.18(b). Although you claim the submitted custodial death reports are excepted from disclosure 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

¹ We 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.

Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the city must release the submitted custodial death reports pursuant to article 49.18(b) 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). The city states the remaining information pertains to a pending criminal investigation or prosecution. 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 remaining information.

However, we note 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 basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

In summary, the city must release the submitted custodial death reports pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, which must be released, the city 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 <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

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Mr. James Kopp - Page 3

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/be

Ref: ID# 940043

Enc. Submitted documents

c: Requestor
(w/o enclosures)