



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2009

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-08104

Dear Mr. Weir:

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# 346056 (ORR 2009-3162).

The City of San Antonio (the "city") received a request for information relating to a specified investigation. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted documents include a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that the attorney general shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Code Crim. Proc. art. 49.18(b). The report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The OAG has determined that the four-page report and summary must be released to the public but that any other documents submitted with the revised report are confidential under article 49.18(b). In this instance, you have submitted a four-page

¹We note that in your letter dated April 16, 2009, you withdrew your assertion under section 552.103 of the Government Code.

custodial death report with an attached summary. The city must release the submitted custodial death report and summary, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure. We note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

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.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on this representation, we conclude that the release of this 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. App.—Houston [14th Dist.] 1975), writ *ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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. Basic information includes a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the remaining submitted information under section 552.108 of the Government Code.

In summary, the city must release the custodial death report and summary, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, the city may withhold the remaining 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 http://www.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 346056

Enc. Submitted documents

c: Requestor
(w/o enclosures)