



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2014

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2014-05035

Dear Ms. Armstrong:

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# 519919 (DPD ORR# 2014-00984).

The Dallas Police Department (the "department") received a request for information pertaining to the investigation of the death of a named individual. We understand the department has made some of the requested information available to the requestor, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the submitted information contains a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides the Office of the Attorney General shall make the custodial death report available to any interested person, with the exception of any

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<sup>1</sup>We understand you to raise section 552.101 based on your markings.

<sup>2</sup>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 those records contain substantially different types of information than that submitted to this office.

portion of the report that the attorney general determines is privileged. *See* Crim. Proc. Code art. 49.18(b). The format of a custodial death report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The Office of the Attorney General has determined the four-page report and summary must be released to the public, but any other documents submitted with the revised report are confidential under article 49.18(b). Although you seek to withhold the custodial death report under section 552.108 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.108(a)(1) excepts from disclosure information 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). Generally, 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 id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, section 552.108 is generally not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). You inform us the remaining information you have marked under section 552.108 pertains to a pending criminal investigation. Based on this representation, we conclude the release of the submitted 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. 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). Therefore, we agree the department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.<sup>3</sup>

You assert that some of the remaining information is excepted from disclosure under section 552.136 of the Government Code, which provides “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand an employee's identification number is used in conjunction with one additional digit in order

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<sup>3</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

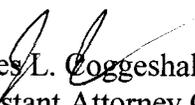
to access the employee's credit union account. Thus, the department must withhold the identification numbers you have marked in the remaining information under section 552.136 of the Government Code.

To conclude, the department must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure. The department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the remaining information you have marked under section 552.136 of the Government Code. The department must release the remaining information.

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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 519919

Enc. Submitted documents

c: Requestor  
(w/o enclosures)