



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2014

Ms. Molly Cost
Assistant General Counsel
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-22828

Dear Ms. Cost:

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# 548270 (PIR # 14-4033).

The Texas Department of Public Safety (the "department") received a request for (1) incidents, reports, and supporting documentation regarding firearm discharges from department helicopters, (2) contract documents regarding contractors training department personnel in aerial shooting, and (3) incidents, reports, and supporting documents regarding department helicopters assisting in high-speed pursuits.¹ You state the department was unable to locate any records responsive to the second portion of the request.² We understand the department will release information responsive to the third portion of the request to the requestor upon her response to a cost estimate. You claim the submitted information is

¹We note the department sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

You inform us some of the information responsive to the first portion of the request was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2013-01248 (2013) and 2013-20796 (2013). In Open Records Letter No. 2013-01248, we determined the department (1) must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, (2) must withhold the information we marked under section 552.130 of the Government Code, (3) must release the remaining information we marked pursuant to section 552.022 of the Government Code, (4) with the exception of basic information, may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code, and (5) must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863. In Open Records Letter No. 2013-20796, we determined (1) except for the information pertaining to the use-of-force investigation that we indicated, the department must withhold the submitted responsive information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, and (2) the department must release the remaining responsive information. You state there has been no change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, the department must rely on Open Records Letter Nos. 2013-01248 and 2013-20796 as previous determinations and withhold or release the identical information in accordance with those rulings. *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). We will address your argument against disclosure of the information at issue, which was not responsive to the previous requests for information.

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 must reasonably 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 information at issue relates to an ongoing criminal investigation. Based upon your

³We 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.

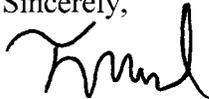
representation, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

In summary, the department must rely on Open Records Letter Nos. 2013-01248 and 2013-20796 as previous determinations and withhold or release the identical information in accordance with those rulings. The department may withhold the remaining information at issue 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 548270

Enc. Submitted documents

c: Requestor
(w/o enclosures)