



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 16, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
Office of the City Attorney  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2009-13082

Dear Ms. Sandoval-Walker:

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# 355607.

The El Paso Police Department (the "department") received a request for information related to a specified incident, including police and fire department incident reports, video recordings, and photographs, as well as any information relating to domestic violence reports at a specified address. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted a video recording and photographs. To the extent other information responsive to the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We next note, and you acknowledge, the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). The submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to

withhold any of the information. See *id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim an exception to disclosure under section 552.108 of the Government Code, which is discretionary and may be waived. See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. See Open Records Decision No. 586 at 2-3 (1991). You state a compelling reason for non-disclosure exists because the District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information. Therefore, we will determine whether the department may withhold the information on behalf of the district attorney under section 552.108.

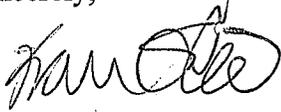
Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *Id.* § 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney informs us the submitted information relates to an ongoing prosecution. Based on this representation, we conclude 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that section 552.108(a)(1) applies to submitted information, and it may be withheld on that basis.

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](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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen E. Stack". The signature is fluid and cursive, with the first name "Karen" being more prominent.

Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/jb

Ref: ID# 355607

Enc. Submitted documents

c: Requestor  
(w/o enclosures)