



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2012

Ms. Valecia R. Tizeno
City Attorney
City of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77641-1089

OR2012-16349

Dear Ms. Tizeno:

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# 467984.

The Port Arthur Police Department (the "department") received two requests for information from the same requestor. The first request is for policies pertaining to video equipment in police cars, information regarding investigations of incidents at a specified address during a specified time period, and dispatch records and recordings of calls pertaining to incidents, investigations, and disturbances during a specified time period. The second request is for thirteen categories of information related to the audio and video equipment of officers responding to incidents at a specified address during a specified time period. You state you do not have information responsive to portions of the second request.¹ You state you have released some of the requested information. 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. We have also considered comments submitted to this office by the requestor. See Gov't Code § 552.304

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends the department has not released portions of the requested information. Additionally, the requestor contends other information released to him has had "notes placed over important information so that the information cannot be read." The department states it "has released all the documents that [it] has determined to be releaseable" and "all other documents" have been sent to this office for our review. Whether the department actually provided the information at issue to the requestor is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Thus, we assume the department has released to the requestor any responsive information for which the department is not claiming an exception. If not, the department 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).

Next, we note in his comments to this office, the requestor states that he withdraws his request for offense report number 64-12. Accordingly, we find offense report number 64-12 is not responsive to the request. This ruling does not address the public availability of non-responsive information, and the department need not release non-responsive information in response to this request. However, we note the requestor also seeks "notes, films, photographs, recordings, and records" related to the specified address and specified time period, as well as information relating to the responding officers' audio and video equipment. Therefore, we will address the department's arguments for the remaining information.

The requestor also contends that the department failed to comply with section 552.301 of the Government Code with respect to his first request for information. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D).

You state the department received the first request for information on July 13, 2012. Accordingly, the department's ten and fifteen-business-day deadlines regarding the first request were July 27, 2012 and August 3, 2012 respectively. However, the department did not request a ruling regarding the first request until August 6, 2012. Further, the department submitted additional information responsive to the first request on September 11, 2012 when it requested a ruling regarding the second request. Accordingly, we conclude the department failed to comply with section 552.301 with respect to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this is a discretionary exception that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). 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 have provided a letter from the Jefferson County Criminal District Attorney's Office (the district attorney's office), in which the district attorney's office asserts a law enforcement interest in the submitted information. Therefore, we will consider whether the submitted information may be withheld on behalf of the district attorney's office under section 552.108.

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 submitted information is part of the investigation files of the department and the district attorney's office. You inform us, and provide documentation showing, the district attorney's office objects to release of the submitted information because it relates to pending prosecutions of criminal cases. Based upon these representations and our review, we determine that 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

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). Section 552.108(c) refers to basic front-page information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, except for basic information, which you state you have released, the department may withhold the submitted information on behalf of the district attorney's office 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, toll free at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 467984

Enc. Submitted documents

c: Requestor
(w/o enclosures)