



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2013

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2013-03273

Dear Ms. Yancey:

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# 479752.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified investigation. You claim the requested 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 by the City of Denton Police Department (the "department") and the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the district attorney's office failed to comply with its procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that 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. 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) 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. The district attorney's office states it received a request for the information at issue on November 29, 2012 (the "first request"), and a request from a different requestor for this same information on November 30, 2012 (the "second request"). The first request was withdrawn by that requestor on December 15, 2012. Thus, for the second request, the district attorney's office's ten-business-day deadline under section 552.301(b) was December 14, 2012, and its fifteen-business-day deadline under section 552.301(e) was December 21, 2012. The envelope containing the request for a ruling for the second request is postmarked December 13, 2012, and the envelope containing the information required to be submitted pursuant to section 552.301(e) for the same request is postmarked December 18, 2012. See Gov't Code § 552.308(a) (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, upon review, we find the requestor has not established the district attorney's office failed to comply with its procedural obligations under section 552.301. Therefore, we will consider the submitted arguments to withhold the submitted information from release under the Act.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" 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), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. See *Open Records Decision No. 474* at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108(a)(1) if (1) it demonstrates the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. The district attorney's office asserts "the ultimate responsibility for the release or nondisclosure of the requested information remains with the [d]epartment." The department inform us the submitted information pertains to an investigation that is still pending. Thus, 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).

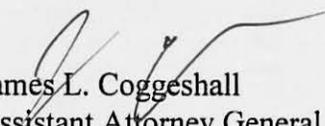
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the

basic front-page offense and arrest information, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 479752

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As we are able to resolve this matter under section 552.108, we do not address the other claims for exception of the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991). We also note this ruling does not affect an individual's right of access to (1) a patient's medical records from the physician who provided treatment under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code or (2) a patient's dental records from the dentist who provided treatment under chapter 258 of the Occupations Code. See Occ. Code §§ 159.004-.006, 258.102-.104; cf. *Abbott v. Tex. State Bd. of Pharmacy*, No. 03-11-00481-CV, 2012 WL 5974080 (Tex. App.—Austin Nov. 21, 2012, no pet.) (MPA does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).