



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2013

Mr. Brent Webster
Assistant District Attorney
County of Williamson
405 M.L.K. Street, Box #1
Georgetown, Texas 78626

OR2013-04583

Dear Mr. Webster:

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# 482996.

The Williamson County District Attorney's Office (the "district attorney's office") received a request for the entire case file for a specified case. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains information that does not relate to the requested file. This information, which we have indicated, is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information, and the district attorney's office is not required to release nonresponsive information in response to this request.

Next, we address your assertion that some of the requested information was the subject of previous requests for information, a result of which this office issued Open Records Letter Nos. 2008-10444A (2008) and 2011-18018 (2011). In Open Records Letter No. 2008-10444A, we ruled, in part, that the Williamson County Sheriff's Office (the "sheriff's office") must release information from a completed report subject to section 552.022(a)(1) of the Government Code and court-filed documents subject to section 552.022(a)(17) of the Government Code, may withhold the information not subject to sections 552.022(a)(1) and 552.022(a)(17) under section 552.103 of the Government Code, and with the exception of basic information, may withhold the information we have

marked under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2011-18018, we concluded that with the exception of the submitted information that must be released in accordance with Open Records Letter No. 2008-10444A, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. Although you seek to release information pursuant to those prior rulings, those requests for information were submitted to a different governmental body. Therefore, the district attorney's office may not rely on our previous rulings to the sheriff's office as previous determinations for the information at issue. *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). Accordingly, we will consider your arguments against disclosure of the submitted information.

We must address the district attorney's office's procedural obligations under the Act. Section 552.301 of the Government Code 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(e), a governmental body that receives a request for information it wishes to withhold under an exception to disclosure must submit to this office within fifteen business days of receiving the 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. Gov't Code § 552.301(e). You state the district attorney's office received the request for information on January 10, 2013. We understand the district attorney's office was closed on January 21, 2013 in observance of Martin Luther King, Jr. Day. We note this office does not count holidays for purposes of calculating a governmental body's deadlines under the Act. Thus, the district attorney's office's fifteen-business-day deadline was February 1, 2013. The envelope in which the district attorney's office provided a copy of the specific information requested, as required by section 552.301(e), was postmarked March 5, 2013. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Accordingly, we conclude the district attorney's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to

section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.103 and 552.108 of the Government Code for the requested information, these sections are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the submitted information under sections 552.103 and 552.108 based on its own interests. However, the law enforcement interests 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). In this instance, the district attorney's office has provided a letter from the Texas Attorney General's Office (the "OAG") objecting to disclosure of the requested information pursuant to section 552.108 of the Government Code. Accordingly, we will consider whether the district attorney's office may withhold the submitted information on behalf of the OAG under section 552.108 of the Government Code.

Next, we note the submitted information contains documents filed with a court, which are subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the OAG seeks to withhold this information under section 552.108 of the Government Code, that section is a discretionary exception to disclosure and does not make information confidential under the Act. *See id.* § 552.007; ORDs 665 at 2 n.5 (discretionary exceptions generally), 177 at 3 (statutory predecessor to section 552.108 subject to waiver). Therefore, the court-filed documents may not be withheld under section 552.108 of the Government Code. As no further exceptions against disclosure of the court-filed documents are raised, the district attorney's office must release the court-filed documents, which we have indicated, pursuant to section 552.022(a)(17) of the Government Code.

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(a)(1) 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). The OAG states the submitted information relates to a pending criminal case. Based upon the OAG's representation, we conclude that the release of the remaining 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.

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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the district attorney’s office may withhold the remaining submitted information under section 552.108(a)(1).

In summary, with the exception of the information we have indicated that is subject to section 552.022(a)(17) of the Government Code and basic 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

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¹We note the information being released contains a living person’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

Ref: ID# 482996

Enc. Submitted documents

c: Requestor
(w/o enclosures)