



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2013

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2013-13928

Dear Ms. Middlebrooks:

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# 496250 (DPD PIR# 2013-06204).

The Dallas Police Department (the "department") received a request for all "shooting summaries," e-mails, internal memoranda, or other documentation submitted to the Federal Bureau of Investigation-Dallas Civil Rights Office during a specified time period, including those pertaining to the shooting deaths of two named individuals and those submitted to a named special agent or any other special agent in that division. 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 representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the department did not comply with the procedural requirements of the Act. Pursuant to section 552.301(b), the governmental body

¹We 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 those records contain substantially different types of information than those submitted to this office.

must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). Additionally, pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *See id.* § 552.301(d). You state, and the submitted information reflects, the department received the present request for information on May 23, 2013. We note this office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. You inform us the department was closed on May 27, 2013. Accordingly, the tenth business day after the receipt of the instant request was June 7, 2013. The envelope containing the department's request for a ruling bears a receipt mark of a common carrier dated June 7, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Moreover, the department's request for a decision reveals it was copied to the requestor on June 7, 2013. *See id.* § 552.301(d). Thus, we conclude the department complied with the requirements of section 552.301 of the Government Code in requesting a decision from this office.

The requestor also argues the department has previously released other "shooting summaries," and may not now withhold this information under section 552.108. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. The requestor states the department has released other "shooting summaries," but does not assert the submitted information has been previously released in its exact form. Accordingly, we find section 552.007 of the Government Code is inapplicable to the submitted information, and we will address the department's argument against disclosure of this 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The requestor asserts that while there may have been pending criminal investigations pertaining to the shootings at issue, some of those investigations have been completed. However, the department states the submitted information relates to an ongoing criminal investigation. Whether the incident at issue relates to an ongoing criminal investigation is a question of fact. Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon 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 ORD 552 at 4. Based on the department's representation, we find 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). Therefore, the department may withhold the submitted information 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eb

Ref: ID# 496250

Enc. Submitted documents

c: Requestor
(w/o enclosures)