



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2014

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2014-01739

Dear Mr. Hernandez:

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# 512201 (Edinburg Ref. # 56978).

The Edinburg Police Department (the "department") received a request for a specified arrest report, photographs, and video relating to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department did not fully comply with section 552.301 of the Government Code. 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. *See* Gov't Code § 552.301(b). You inform us the department received the request for information on October 22, 2013. Thus, the department's ten-business-day deadline under section 552.301(b) was November 5, 2013. We note the envelope in which you requested a ruling from this office bears a meter mark of November 7, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the procedural requirements mandated by section 552.301.

A governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released unless the governmental body overcome this presumption by demonstrating a compelling reason to withhold the information. *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). 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). Section 552.108 is a discretionary exception to disclosure which protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the interest 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 Nos. 586 (1991), 469 (1987). You inform us, and have provided documentation showing, that the Hidalgo County Criminal District Attorney's Office (the "district attorney's office") asserts an interest in the submitted information. Therefore, we will consider whether the department may withhold this information under section 552.108 on behalf of the district attorney's office. Further, because section 552.130 of the Government Code can provide a compelling reason for non-disclosure, we will address the applicability of this exception to the submitted 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 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). In this instance, the district attorney's office states the submitted information relates to a pending criminal case and requests the information be withheld on that basis. Based on your representation and our review, we conclude the release of the information you have marked 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we agree the department may generally withhold the information you have marked under section 552.108(a)(1).

We note, 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* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you seek to withhold the entire narrative portion of the submitted report under section 552.108. However, the remaining information in the report does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See* ORD 127. Therefore, with the exception of a detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

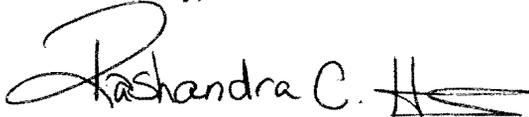
Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]” See Gov’t Code § 552.130(a)(1)-(2). The department must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code.¹

In summary, with the exception of a detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

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,



Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id* § 552.130(d), (e).

²You have marked social security numbers in the remaining information. 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# 512201

Enc. Submitted documents

c: Requestor
(w/o enclosures)