



January 26, 2015

Mr. Kyle St. Clair  
Assistant General Counsel  
Office of General Counsel  
University of North Texas System  
1901 Main Street, Suite 216  
Dallas, Texas 75201

OR2015-01443

Dear Mr. St. Clair:

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# 557810 (ORR# 002973).

The University of North Texas System (the "system") received a request for information pertaining to the disposition of a specified arrest of a named individual. You state the system will release 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 representative sample of information.<sup>1</sup>

Initially, we must address the system's obligations under section 552.301 of the Government Code, which 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. 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 id.* § 552.301(b). You state the system received the request for information on December 17, 2014. We understand the system was closed for business

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<sup>1</sup>We 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 that submitted to this office.

between December 24, 2014, and January 5, 2015. You do not inform us the system was closed for any additional business days between December 17, 2014, and January 13, 2015. Accordingly, you were required to request a decision from this office by January 13, 2015. However, the envelope in which the system provided the information required by section 552.301(b) was postmarked January 15, 2015. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the system 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 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision Nos. 319 (1982), 586 (1991), 630 (1994). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Although the system claims an exception to disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the system may not withhold the responsive information based on its own law enforcement interest. However, the need of a governmental body other than the agency that is seeking an open records decision to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. *See* ORD 586 at 3. Because you inform us, and provide documentation showing, the Denton County Criminal District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the system may withhold the submitted information under section 552.108 on behalf of the district attorney's office.

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(a)(1) 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). You have provided documentation from the district attorney's office demonstrating the information relates to a pending criminal prosecution. Based upon this representation, we conclude release of the information will

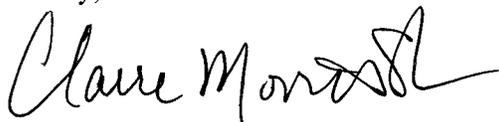
interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, we note, and you acknowledge, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which you state has been released, the system 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 557810

Enc. Submitted documents

c: Requestor  
(w/o enclosures)