



January 28, 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

OR2015-01676

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# 552682 (UNT PIR No. 002894).

The University of North Texas Police Department (the "department") received a request for information relating to a specified incident. The department states it will release some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a

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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.

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. *Id.* § 552.301(e). The department states it received the request for information on November 7, 2014. However, we note the submitted request reflects it was e-mailed to the department on November 4, 2014. We note the Act requires a request for public information sent by electronic mail be submitted to the officer for public information or that person's designee. *Id.* § 552.301(c). The department's website provides that requests for public information should be directed to a named employee. The instant request was submitted by e-mail to the employee named on the department's website. Therefore, we find the department received the request on November 4, 2014. We note November 11, 2014, was a holiday. 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. The department does not inform us it was closed for business on any of the remaining days at issue. Accordingly, the ten-business-day deadline was November 19, 2014, and the fifteen-business-day deadline was November 26, 2014. However, the department submitted the information required under section 552.301(b) in an envelope bearing a meter-mark of November 21, 2014, and the information required under section 552.301(e) in an envelope bearing a meter-mark of December 1, 2014. *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). Consequently, we find the department failed to comply with 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 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). The department claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to

section 552.108 subject to waiver). Thus, the department may not withhold the submitted information under section 552.108 based on its own interest. 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). The department has provided a letter from the Denton County Criminal District Attorney's Office (the "district attorney's office") objecting to release of the submitted information under section 552.108. Accordingly, we will consider whether the department 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 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 department states the information it has marked relates to a pending investigation and prosecution. The department states, and submits documentation demonstrating, the district attorney's office objects to the disclosure of the information at issue because its release will interfere with the pending prosecution. Upon review, we conclude the release of the information at issue 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, section 552.108(a)(1) is applicable to the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the department has marked most of the narrative portion of the responsive report for withholding. The remaining information in the responsive report does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released. Accordingly, the department must release sufficient portions of the responsive report to encompass basic information as described by *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* ORD 127. Thus, with the exception of basic information, which must be released, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 552682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)