



February 12, 2015

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

OR2015-02784

Dear Ms. Armstrong:

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# 557980 (DPD ORR# 2014-12996).

The Dallas Police Department (the "department") received a request for information regarding a specified incident. 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.¹

Initially, we note, and you acknowledge, the department failed to comply with the requirements of section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b), (e). 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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also Simmons v. Kuzmich*, 166

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

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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

Although you raise 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 Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the requested information on the basis of its own interests under section 552.108. However, the need of a governmental body, other than the one seeking an open records decision, to withhold information under section 552.108 can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 at 2-3 (1991). You inform us, and submit correspondence from the Dallas County District Attorney's Office (the "district attorney's office") which reflects, the district attorney's office objects to the release of the information at issue. Thus, we will address whether the department may withhold the requested information on behalf of the district attorney's office under section 552.108.

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).

You have provided documentation from the district attorney's office stating the requested information relates to a criminal case that is pending prosecution. Further, the district attorney's office objects to the release of the information. Based on these representations, 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the information you 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 557980

Enc. Submitted documents

c: Requestor
(w/o enclosures)