



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2015-04363

Dear Ms. McClellan:

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# 555581 (DPD Request Number: 2014-3835).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident involving two named individuals. 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 information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-10204 (2014). In that ruling, we determined with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. You inform us there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2014-10204 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from

disclosure). As the submitted information is not encompassed by the previous ruling, we address your argument against disclosure.

Next, we note, and you acknowledge, the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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 governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that protects a governmental body's interests and may be waived. *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). Because the department failed to comply with section 552.301, the department has waived its claim under section 552.108. Nevertheless, the interests 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 No. 586 at 2-3 (1991). You state, and provide documentation showing, the Dallas County District Attorney's Office (the "district attorney's office") objects to the release of the submitted information. Therefore, we will consider whether the submitted information may be withheld on behalf of the district attorney's office under section 552.108 of the Government Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 inform this office, and provide documentation showing, the district attorney's office objects to release of the information at issue because its release would interfere with a pending criminal investigation. Based on this representation, we conclude that section 552.108(a)(1) is applicable to the submitted information. *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).

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). Section 552.108(c) refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the submitted information on behalf of the district attorney’s office under section 552.108(a)(1) of the Government Code.

In summary, the department may continue to rely on Open Records Letter No. 2014-10204 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of basic information, which must be released, the department may withhold the submitted information on behalf of the district attorney’s office 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,



Alley Latham
Assistant Attorney General
Open Records Division

AL/akg

Ref: ID# 555581

Enc. Submitted documents

c: Requestor
(w/o enclosures)