



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2015

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

OR2015-07074

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# 564941 (ORR No. 2015-02352).

The Dallas Police Department (the "department") received a request for reports regarding five specified addresses during a specified time period. You indicate the department does not have information responsive to portions of the request.¹ You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you do not raise section 552.130 of the Government Code in your briefing to this office, we understand you to raise this section based upon your markings in the submitted documents.

³We assume that 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.

Initially, we note, and you acknowledge, the department has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. *See* 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. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by law or affects third party interests. *See* Open Records Decision No. 150 (1977). You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that may be waived. *See* Gov't Code § 552.007; 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 Gov't Code § 552.108 subject to waiver). However, 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 inform us that the Dallas County District Attorney's Office (the "district attorney's office") asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the department may withhold any of the information at issue on behalf of the district attorney's office under section 552.108. Additionally, because section 552.130 of the Government Code can provide a compelling reason for non-disclosure, we will also address the applicability of that section.

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). You state and submit documentation demonstrating, the district attorney's office objects to the release of the information you have marked because it pertains to a pending criminal investigation or prosecution. Based upon this representation, we conclude 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov't Code* § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must release the remaining information.⁴

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 564941

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See Gov't Code* § 552.147(b).