



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 14, 2015

Ms. Natalie R. Broaddus  
Assistant District Attorney  
County of Brazoria  
County Courthouse  
111 East Locust, Suite 408A  
Angleton, Texas 77515

OR2015-07148

Dear Ms. Broaddus:

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# 559863.

The Brazoria County District Attorney's Office (the "district attorney's office") received a request for offense reports, the Texas Department of Corrections summary, and pre-sentence investigation reports pertaining to the requestor's client in regard to a specified case. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted the requested offense report. We assume, to the extent any information responsive to the remainder of the request existed on the date the district attorney's office received the request, the district attorney's office has released it. If the district attorney's office has not released any such information, it must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

We understand you to assert the submitted responsive information is excepted under section 552.108 of the Government Code as interpreted by *Holmes v. Morales*. *See* 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held the plain language of

section 552.108 did not require a governmental body to show release of the information would unduly interfere with law enforcement. *Id.* at 925. The *Holmes* case further held “section 552.108’s plain language makes no distinction between a prosecutor’s ‘open’ and ‘closed’ criminal litigation files” and concluded the Harris County District Attorney may withhold his closed criminal litigation files under that exception. *Id.* Subsequent to the interpretation of section 552.108 in *Holmes*, the Seventy-fifth Legislature extensively amended section 552.108. *See* Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 1, 1997 Tex. Gen. Laws 4697. As amended, section 552.108 now expressly requires a governmental body to explain, among other things, how release of the information would interfere with law enforcement. Accordingly, the court’s ruling in *Holmes*, which construed former section 552.108, is superseded by the amended 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: (1) 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 the submitted information relates to a pending case. Based on this representation and our review, we find release of the information 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, we find section 552.108(a)(1) is applicable to the submitted information.

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 basic “front-page” 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). Basic information includes, among other things, the names of the arresting and investigating officers. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, the district attorney’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You indicate some of the arresting and investigating officers are undercover officers. You explain the release of the names of these undercover officers would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 of the Government Code is applicable to this information. Accordingly, the district attorney's office must withhold the names of the undercover officers under section 552.152 of the Government Code.

In summary, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the district attorney's office must withhold the names of the undercover officers under section 552.152 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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/cbz

Ref: ID#559863

Enc. Submitted documents

c: Requestor  
(w/o enclosures)