



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2015

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

OR2015-09252

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# 564695 (DPD ORR# 2015-01278).

The Dallas Police Department (the "department") received a request for records pertaining to a specified address during a specified time period. 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, we note, and you acknowledge, the department did not comply with section 552.301 of the Government Code. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code §§ 552.301(b), (e). A governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released unless the governmental body overcome this presumption by demonstrating a compelling reason to withhold the information. *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). 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). Section 552.108 is a discretionary exception to disclosure which protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the interest 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 Nos. 586 (1991), 469 (1987). You have provided documentation showing that the U.S. Drug Enforcement Agency (the "DEA") asserts an interest in the submitted information. Therefore, we will consider whether the department may withhold this information under section 552.108 on behalf of the DEA.

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). In this instance, the DEA states the information at issue relates to a pending criminal investigation and release may negatively affect the investigations outcome. Based on your representation and our review, 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the DEA. The department must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Sean Nottingham". The signature is fluid and cursive, with the first name "Sean" being more prominent than the last name "Nottingham".

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/cbz

Ref: ID# 564695

Enc. Submitted documents

c: Requestor
(w/o enclosures)