



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2015

Ms. Caroline L. Cross
Assistant District Attorney
Dallas County District Attorney's Office - Civil Division
411 Elm Street
Dallas, Texas 75202-3317

OR2015-09290

Dear Ms. Cross:

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# 563659.

The Dallas County Criminal District Attorney's Office (the "district attorney's office") received a request for four categories of information pertaining to a specified chair.¹ You state you have released some information. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-08158 (2015). In Open Records Letter No. 2015-08158, we concluded the district attorney's office may withhold certain information pursuant to rule 503 of the Texas Rules of Evidence and certain information under section 552.107(1) of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office may continue to rely on Open Records Letter No. 2015-08158 as a previous determination

¹As you have not submitted a copy of the written request for information, we take our description from your brief.

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 information is or is not excepted from disclosure).

Next, we note some of the submitted information, which you have marked, is not responsive to the instant request because it does not pertain to the specified chair. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release such information in response to this request.

Next, we must address the district attorney's office's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that 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. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state you received the request on February 19, 2015. You inform us the district attorney's office was closed on February 23, 2015. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the district attorney's office's fifteen-business-day deadline was March 13, 2015. As of the date of this ruling, the district attorney's office has not submitted a copy of the request for information. Consequently, the district attorney's office failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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 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). Although you raise section 552.107 of the Government Code

for the submitted responsive information, this exception is discretionary in nature. This section serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute compelling reasons to withhold information. *See* Open Records Decision Nos. 676 at 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the district attorney's office has waived its claims under section 552.107 for the submitted responsive information. Accordingly, no portion of the submitted responsive information may be withheld under section 552.107 of the Government Code. As you raise no other exceptions to disclosure, the submitted responsive information must be released.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 563659

Enc. Submitted documents

c: Requestor
(w/o enclosures)