



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2015

Ms. Melanie Barton
Assistant District Attorney
County of Dallas
411 Elm Street, Fifth Floor
Dallas, Texas 75202-3317

OR2015-09963

Dear Ms. Barton:

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# 564410.

The Dallas County District Attorney's Office (the "district attorney's office") received two requests for (1) all state and federal forfeiture fund records requested by a law enforcement entity; (2) all records regarding defense attorneys that have been requested by a law enforcement entity; and (3) any letters or orders from a law enforcement entity asking for records or information from the district attorney's office. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether the requested information is excepted from public

¹We 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.

disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Although you raised sections 552.101, 552.108, and 552.111 within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.103 of the Government Code until after the ten-business-day period had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions). Therefore, in failing to timely raise section 552.103 of the Government Code, the district attorney's office has waived its argument under this section and may not withhold any of the submitted information on that basis.

Pursuant to section 552.301(e) of the Government Code, within fifteen business days of receiving the request the governmental body must submit to this office (1) general 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* Gov't Code § 552.301(e). You state the district attorney's office received the requests for information on March 3, 2015. Although the district attorney's office timely submitted some of the responsive information on March 16, 2015, we note the district attorney's office submitted additional responsive information on May 6, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district attorney's office failed to comply with the procedural requirements mandated by section 552.301(e) of the Government Code with respect to the information submitted on May 6, 2015.

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. *Id.* § 552.302; *see also 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 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you seek to withhold the information submitted on May 6, 2015, under sections 552.108 and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interest 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 No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* ORDs 665 at 2 n.5, 663 at 5. Thus, in failing to comply with section 552.301(e), the district attorney's office has waived its claims under sections 552.108 and 552.111 for the information submitted on May 6, 2015. Thus, the district attorney's office may not withhold this information under section 552.108 or section 552.111 of the Government Code. However, the need of a governmental body, other than the one that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 at 2-3 (1991). In this instance, the U.S. Attorney's Office (the "attorney's office") objects to the release of the submitted information. Thus, we will address whether the district attorney's office may withhold the submitted information on behalf of the attorney's office under section 552.108. You also argue section 552.101 of the Government Code for the submitted information. This section can provide a compelling reason to withhold information. Additionally, we note the submitted documents include information subject to sections 552.130 and 552.136 of the Government Code, which also can provide compelling reasons to overcome the presumption of openness.² Therefore, we will address the applicability of these exceptions to the submitted information.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.022(a)(1), (3), (17). The submitted information contains completed investigations subject to section 552.022(a)(1) of the Government Code. The district attorney's office must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Because information that is subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider the district attorney's office's argument under section 552.108 on behalf of the attorney's office for the information subject to section 552.022(a)(1) and the remaining information not subject to section 552.022. The submitted information also includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by the district attorney's office subject to section 552.022(a)(3) and court-filed documents subject to section 552.022(a)(17). The district attorney's office must release this information pursuant to sections 552.022(a)(3) and 552.022(a)(17) unless the information is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (17). Although you and the attorney's office raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception to disclosure and does not make information confidential under the Act. *See* ORD177 at 3; *see also* ORD 665 at 2 n.5. However, we note portions of the information subject to section 552.022(a)(3) are subject to sections 552.130 and 552.136 of the Government Code, both of which make information confidential under the Act. Thus, we will address the applicability of these exceptions to the information at issue.

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). A governmental body claiming section 552.108(a)(1) 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 a letter from the attorney's office representing, the submitted information relates to a pending criminal investigation by the attorney's office, which objects to the release of the information at issue. Based on these representations, we find 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). Thus, we find the district attorney's office may withhold the information subject to section 552.022(a)(1) and the remaining information not subject to section 552.022 under section 552.108 of the Government Code on behalf of the attorney's office.³

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the district attorney's office must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the district attorney's office may withhold the information subject to section 552.022(a)(1) and the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code on behalf of the attorney's office. The district attorney's office must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The district attorney's office 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 564410

Enc. Submitted documents

c: Requestor
(w/o enclosures)