



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 28, 2015

Ms. Josi Diaz
Assistant City Attorney
Criminal Law and Police Station
1400 South Lamar
Dallas, Texas 75215

OR2015-10338

Dear Ms. Diaz:

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# 568170 (ORR# 2015-03470).

The Dallas Police Department (the "department") received a request for a specified offense and arrest report. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. You have also provided arguments from the Dallas County District Attorney's Office (the "district attorney's office") claiming sections 552.103 and 552.108 of the Government Code for the submitted information. *See* Gov't Code § 552.304(a). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, the department has not complied with the procedural requirements of section 552.301 of the Government Code in requesting this ruling. *See id.* § 552.301(b). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd.*

¹We assume 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.

of *Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome the presumption of openness pursuant to the statutory predecessor of section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information may exist when the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 is subject to waiver). Therefore, the department may not withhold the requested information based on its own law enforcement interest. However, the need of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under sections 552.103 and 552.108 of the Government Code can provide compelling reasons to withhold information from disclosure under section 552.302. Open Records Decision Nos. 586 (1991), 469 (1987). You provide a representation from the district attorney's office asserting the submitted information should be withheld under sections 552.103 and 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney's office under sections 552.103 and 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 . . . 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You have provided documentation from the district attorney's office stating the information relates to a pending criminal prosecution and the district attorney's office objects to release of the information. Based upon these representations, we conclude that the release of the submitted information will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, we note, and you acknowledge, section 552.108(a)(1) does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception

of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/eb

Ref: ID# 568170

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² The basic information includes the arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. As our ruling is dispositive, we need not address your remaining arguments except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).