



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2015

Ms. Evelyn W. Kimeu
Staff Attorney
Houston Police Department
1200 Travis
Houston, Texas 77002

OR2015-13877

Dear Ms. Kimeu:

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# 570935 (ORU No. 15-2500).

The Houston Police Department (the "department") received a request for the entire offense report and information pertaining to a specified incident. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not relate to the specified incident. The ruling does not address the public availability of the non-responsive information and that information, which we have marked, need not be released in response to this request.

We must address the requestor's contention that he was not properly notified of the department's request for a ruling from this office as required by section 552.301(d) of the Government Code. Pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy

of the governmental body's written communication to the attorney general. *Id.* § 552.301(d). You state the department received the present request on April 16, 2015. Thus, the department's ten-business-day deadline under section 552.301(d) was April 30, 2015. We note the envelope in which the department submitted to this office the information under section 552.301(b) bears a post meter mark of April 30, 2015. *See id.* §§ 552.301(b) (requiring governmental body to ask for ruling from our office and state exceptions that apply within ten business days of receiving written request), .308 (describing rules for calculating submission dates of documents sent via first class United States mail). Additionally, the department's letter to this office contains a notation indicating the requestor was copied on the letter on that same date. Furthermore, in a letter to our office, you responded to the requestor's comments and stated the department placed the information required to be sent to the requestor under section 552.301(d) in the mail on April 30, 2015. Whether the department actually sent the requestor a copy of the department's letter to our office by April 30, 2015, is a question of fact. This office is unable to resolve factual disputes in the open records ruling process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. As noted above, the submitted information reflects the requestor was copied on the initial letter to our office concurrent with the timely delivery to our office. Thus, we conclude the department complied with the requirements of section 552.301(d).

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 information at issue 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, 710 (Tex. 1977). You state Exhibit 2 relates to a criminal investigation that is inactive pending additional leads; however, you explain the statute of limitations has not run and the investigation may be reactivated pending additional leads regarding a third suspect. You explain, although two suspects were convicted in connection with this incident, Exhibit 2 is so intertwined with the open investigation of a third suspect, that it cannot be easily separated. Thus, you state the department objects to disclosure of the information at issue because its release would interfere with the detection and investigation of a crime. Based on this representation, we conclude the 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) of the Government Code is applicable to Exhibit 2.

We note 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). Basic information refers to information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the responsive information in Exhibit 2 under section 552.108(a)(1) of the Government Code.¹

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 570935

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the basic information being released contains the social security number of an arrestee. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).