



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Mr. Daniel Ortiz  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2015-17511

Dear Mr. Ortiz:

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# 576539 (Ref. No. 15-1026-6249).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You indicate you have released some information to the requestor. You claim the submitted information is exempted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2015-07527 (2015), this office ruled, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter No. 2015-07527 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based

---

<sup>1</sup>Although you also raise section 552.101 in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. *See* Gov't Code §§ 552.301, .302.

have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise.

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the 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). In this instance, you state the department received the request for information on May 14, 2015. You inform us the department was closed on May 25, 2015, and the department is closed on Fridays. Accordingly, the department's ten and fifteen-business-day deadlines were June 3, 2015, and June 11, 2015, respectively. You state the envelope in which the department originally submitted the information required by sections 552.301(b) and 552.301(e) was returned to the department for insufficient postage, and the department again mailed the required information to this office in an envelope bearing a postmark of June 17, 2015. Section 552.308 of the Government Code provides, when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Because the department did not submit the information required by sections 552.301(b) and 552.301(e) within the required time period, we find the department failed to comply with the requirements of section 552.301.

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 the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The department raises sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are

discretionary exceptions to disclosure and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, because the department has failed to comply with the procedural requirements of the Act, the department has waived sections 552.103 and 552.108. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). 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. *See* Open Records Decision Nos. 586 (1991), 469 (1987) (university may withhold information under Gov't Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). You provided a statement from the Thirty-Fourth Judicial District Attorney's Office (the "district attorney's office") objecting to the release of the requested information under sections 552.103 and 552.108. Therefore, we will consider whether the department may withhold the requested information under sections 552.103 and 552.108 on behalf of the district attorney's office.

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). Generally, 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). The district attorney's office states the submitted information relates to a pending case, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the submitted information 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, section 552.108(a)(1) is applicable to the submitted information.

However, 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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *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 you state you have released, the department may withhold any remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter No. 2015-07527 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. With the exception of basic information, which must be released, the department may withhold any remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>2</sup>

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](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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 576539

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. See Open Records Decision No. 597 (1991). Although basic information includes an 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 from public release without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.147(b).