



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2015

Mr. Brian L. Rose
Assistant General Counsel
Harris County District Attorney's Office
1201 Franklin Street, Suite 600
Houston, Texas 77002

OR2015-23095

Dear Mr. Rose:

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# 585821.

The Harris County District Attorney's Office (the "district attorney's office") received five requests from the same requestor for information pertaining to (1) three named individuals; (2) specified policies; (3) disclosure of material to opposing council; (4) retention or destruction of evidence; (4) twelve specified cases; (6) four specified incidents; (7) the district attorney's office's interpretation of *Brady v. Maryland*; and (8) specified alleged *Brady* violations and other due process violations. You claim the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim.

Initially, we note portions 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. 2012-14924 (2015). In this ruling, we concluded that, to the extent certain information consists of the home address, home telephone number, driver's license number, present employer, business telephone number, or spouse's employer of an individual who actually served on a petit jury, such information must be withheld under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure; the district attorney's office must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; with the exception of basic information, which the district attorney's office must release, the district attorney's office may withhold certain information under section 552.108(a)(4) of the Government Code; if

article 35.29 of the Code of Criminal Procedure does not apply to the individuals whose information is at issue, the district attorney's office must withhold certain information under section 552.130 of the Government Code; and the district attorney's office must release the remaining information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-14924 was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the district attorney's office must continue to rely on Open Records Letter No. 2012-14924 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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 that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will consider whether the requested information is excepted from disclosure.

We must address the district attorney's office's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a 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* Gov't Code § 552.301(e). You inform us the district attorney's office received the requests on August 13, 2015. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested. Consequently, we find the district attorney's office failed to comply with the procedural requirements of section 552.301.

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). Sections 552.103, 552.108, and 552.111 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 Nos. 677 at 10 (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary

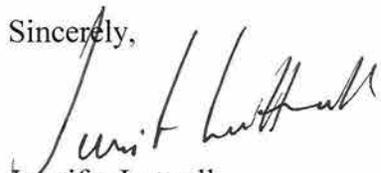
exceptions generally), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Because the district attorney's office has failed to comply with the procedural requirements of the Act, the district attorney's office has waived its claims under these sections. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Accordingly, the requested information may not be withheld under section 552.103, section 552.108, or section 552.111 of the Government Code.

In summary, the district attorney's office must continue to rely on Open Records Letter No. 2012-14924 as a previous determination and withhold or release the identical information in accordance with that ruling. The remaining requested 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 585821

c: Requestor