



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2016

Mr. Nick Lealos
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2016-02427

Dear Mr. Lealos:

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# 596529 (PIR Nos. 15-5800 and 15-5947).

The Texas Department of Public Safety (the "department") received two requests from the same requestor for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). Article 18.20 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the interception of wire, oral, or electronic communications; the installation or use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment; or the disclosure of a stored communication, information subject to an administrative subpoena, or information subject

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 those records contain substantially different types of information than that submitted to this office.

to access under article 18.21 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 18.20, §§ 6, 9; *see also id.* § 1 (defining terms). Section 11 of article 18.20 states “[t]he judge shall seal each application made and order granted under this article.” *Id.* § 11. Article 18.21 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment. *See id.* art. 18.21, § 2; *see also id.* § 1 (defining terms). Article 18.21 also permits a court to issue an order authorizing the disclosure of contents, records, or other information of a wire or electronic communication. *See id.* § 5. Section 2 of article 18.21 states the court “shall seal an application and order granted under this article.” *Id.* § 2(g).

In this instance, the submitted information contains a court order granted under articles 18.20 and 18.21. You indicate, and the order, application, and affidavit submitted as part of the application, likewise reflect, all the documents at issue are filed under seal. As the documents at issue have been sealed by a court pursuant to articles 18.20 and 18.21, we conclude the department must withhold the affidavit submitted as part of the application, application, and court order to obtain access to electronic communication under section 552.107(2) of the Government Code.²

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 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 the remaining information relates to an ongoing investigation. Based on your representation and our review, 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, section 552.108(a)(1) is applicable to the remaining 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 information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information,

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

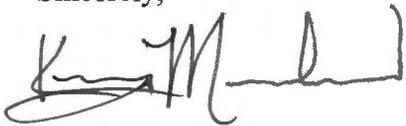
the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the affidavit submitted as part of the application, application, and court order to obtain access to electronic communication under section 552.107(2) of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 596529

Enc. Submitted documents

c: Requestor
(w/o enclosures)