



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2016

Mr. David D. Towler
Counsel for City of Alice
Law Offices of David D. Towler
P.O. Box 569
San Diego, Texas 78384

OR2016-03144

Dear Mr. Towler:

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# 603132.

The City of Alice (the "city"), which you represent, received a request for a specified report. 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 note the city previously received a request for this same information, in response to which this office issued Open Records Letter No. 2015-19877 (2015). In that ruling, we determined the city failed to comply with section 552.301 of the Government Code in requesting a ruling from our office and, thus, waived its argument under section 552.108 of the Government Code for the submitted information. *See* Gov't Code § 552.301(b). However, we concluded the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, the request involves a different requestor, and we find the circumstances have changed. Consequently, the city may not rely on our ruling in Open Records Letter No. 2015-19877 as a previous determination, in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 information is or is not excepted from disclosure). Although you again raise section 552.108 of the Government Code for this information, this exception is discretionary and may be waived. As such, section 552.108 does not make information confidential. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, because the city waived its claim under section 552.108 in Open Records Letter No. 2015-19877, the city may not now raise section 552.108. *See* Gov't Code § 552.302. However, the interests of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You inform us, and provide documentation showing, the 79th Judicial District County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue. Therefore, we will consider whether the city may withhold the submitted information under section 552.108 of the Government Code on behalf of the district attorney's office.

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 indicate the submitted information pertains to a pending criminal case. Based on your 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.

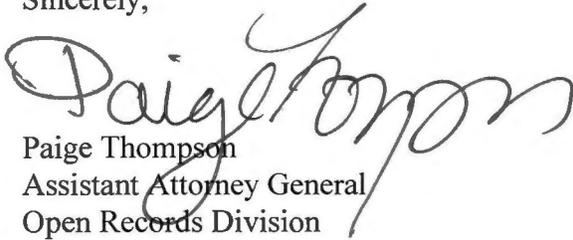
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, you may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.¹

¹We note 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 from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 603132

Enc. Submitted documents

c: Requestor
(w/o enclosures)