



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 30, 2016

Mr. Ricardo Gonzalez  
Lieutenant  
Laredo Police Department  
4712 Maher Avenue  
Laredo, Texas 78041

OR2016-07124

Dear Mr. Gonzalez:

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# 603544 (Ref. No. W005649-010616).

The Laredo Police Department (the "department") received a request for a specified incident report. The department states it has released some information. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, 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). The department states it received the request for information on January 5, 2016. The department states it was closed on January 18, 2016, in observance of Martin Luther King, Jr. Day. This office does not count the date the request was received or holidays the governmental body was closed for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the ten-business-day deadline for requesting a ruling from this office was January 20, 2016. However, the envelope in which the department requested a ruling from this office bears a postmark of January 21, 2016. *See id.*

§ 552.308 (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, 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 the Act results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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); Open Records Decision No. 319 (1982). The presumption information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The department claims an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). The department provides a representation that the Webb County District Attorney's Office (the "district attorney's office") asserts the information at issue should be withheld under section 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney's office under section 552.108.

We note the submitted information includes information subject to section 552.022(a)(17) of the Government Code, which provides for required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code, this section does not make information confidential under the Act. *See* ORDs 665 at 2 n.5, 663 at 5, 177 at 3. Therefore, the department may not withhold the information subject to section 552.022, which we have marked, under section 552.108. Portions of the information subject to section 552.022 are subject to section 552.130 of the Government Code.<sup>1</sup> As section 552.130 makes information confidential under the Act, we will consider the applicability of this exception to the information subject to section 552.022.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The department informs this office the district attorney’s office objects to release of the submitted information because release would interfere with a pending criminal prosecution. Based on this representation, we conclude that section 552.108(a)(1) is applicable to the information at issue. *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).

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, the department may withhold the submitted information not subject to section 552.022 under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the basic information and the information subject to section 552.022 of the Government Code, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 603544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)