



March 30, 2016

Mr. David M. Feldman  
Counsel for the Attorney Pro Tem for the Collin County District Attorney's Office  
Feldman & Feldman  
3355 West Alabama Street, Suite 1220  
Houston, Texas 77098

OR2016-07145

Dear Mr. Feldman:

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# 603505.

The Collin County District Attorney's Office (the "district attorney's office"), which your client represents as Attorney Pro Tem, received a request for "all discovery material turned over to [a named individual's] counsel pursuant to the Michael Morton Act," and "all materials [the district attorney's office has] provided to other public records requestors, copies of all public records requests [the district attorney's office has] received, and copies of all materials [the district attorney's office has] been advised by the [Office of the Attorney General (the "OAG")]" are public but [has] not yet provided to the public." You state you have provided some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. You also state release of the submitted information may implicate the privacy interest of a named individual. Accordingly, you state you notified the named individual, through his attorney, of the request for information and of his right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have received comments from the

attorney for the named individual. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-00027 (2016). In response to Open Records Letter No. 2016-00027, the Attorney Pro Tem for the district attorney's office has filed a lawsuit against our office. *See Collin County District Attorney Pro Tem v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-16-000200 (53rd Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in this lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. To the extent the submitted information is not identical to the information at issue in the pending litigation, we will address the district attorney's office's arguments against disclosure.

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 submitted information relates to a pending investigation and prosecution. Based on your representation and our review, we find 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, the district attorney’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, we will allow the trial court to resolve the issue of whether the information that is the subject of pending litigation must be released to the public. To the extent the submitted information is not identical to the information at issue in the pending litigation, the district attorney’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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<sup>1</sup>We 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.

<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted 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,

A handwritten signature in black ink, appearing to read "Kenny Moreland". The signature is fluid and cursive, with a large initial "K" and a long horizontal stroke at the end.

Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/sdk

Ref: ID# 603505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Philip H. Hilder  
Hilder & Associates  
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(w/o enclosures)