



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2016

Ms. Whitney Borgman
Assistant Criminal District Attorney - Civil Division
County of Hays
712 South Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2016-12819

Dear Ms. Borgman:

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# 614664 (Ref. No. 16-0254).

The Hays County District Attorney's Office (the "district attorney's office") received a request for three specified incident reports. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the raised argument and reviewed the submitted representative sample of information.¹

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). The district attorney's office states the submitted information relates to pending criminal prosecutions. Upon review, we conclude the release of the information at issue would

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize the withholding of, any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 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.

Section 552.108, however, 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

Finally, the district attorney's office asks us to issue a previous determination permitting the district attorney's office to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); *Houston Chronicle v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (acknowledging this office has authority under section 552.301 of the Government Code to decide what constitutes a previous determination); Open Records Decision No. 673 (2001) (describing the two types of previous determinations). We note section 552.011 of the Government Code states "[t]he attorney general shall maintain uniformity in the application, operation, and interpretation" of the Act, chapter 552 of the Government Code. Gov't Code § 552.011. Pursuant to this legislative mandate, section 552.011 grants the attorney general the authority to "prepare, distribute, and publish any materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on" the Act. *Id.* We further note the Act requires governmental bodies to promptly release public information requested under the Act within a reasonable time, without delay. *Id.* § 552.221(a); Open Records Decision No. 664 at 5 (2000).

With the foregoing in mind and upon due consideration, we issue this ruling, which constitutes a previous determination allowing the district attorney's office to withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of

²In this instance, we note the requestor has a special right of access under section 261.201(k) of the Family Code and section 552.023 of the Government Code to the information being released. *See* Fam. Code § 261.201(k) (parent of a child victim of abuse or neglect has a right of access to information otherwise confidential under section 261.201(a) of the Family Code); Gov't Code § 552.023 (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles). If the district attorney's office receives another request for this same information from an individual who does not have a right of access to the information, the district attorney's office should request another ruling. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

first requesting an attorney general decision, so long as the district attorney's office has not previously received a request for the information from the same requestor in the manner described below. *See* ORD 673. This decision is intended to encourage the prompt release of requested public information by increasing the efficiency of the review process under the Act by clearly identifying information the district attorney's office may withhold under the circumstances delineated below. *See* Gov't Code §§ 552.011, .221; Open Records Decision Nos. 684 (2009), 673.

Accordingly, the district attorney's office may withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting a ruling from this office in the following circumstances:

1. the district attorney's office makes a good faith determination that the information at issue relates to the detection, investigation, or prosecution of crime, and the release of the information would interfere with the detection, investigation, or prosecution of an open or pending criminal matter;
2. the district attorney's office will release at least the basic information about an arrested person, an arrest, or a crime (the "releasable information") from the requested information;
3. the district attorney's office will produce the releasable information to the requestor pursuant to the requirements of the Act within five business days after the date the request for information was received;
4. the district attorney's office will provide the requestor with the notice included in Appendix A of this ruling when the district attorney's office responds to the request pursuant to the requirements of this previous determination; and
5. the district attorney's office has not previously received a request for the same information from the same requestor after the district attorney's office has provided the requestor with the releasable information.

See Gov't Code § 552.011. If any of the above circumstances change—or any other law, facts, or circumstances involving the requestor or the status of the requested information changes—the district attorney's office may not rely upon this ruling as a previous determination to withhold the information at issue. *See* ORD 673 at 7. Additionally, the district attorney's office may not rely on this previous determination in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording.

Thus, the district attorney's office may not rely upon this previous determination in response to those types of requests. Furthermore, this previous determination does not apply to situations in which other law may require some or all of the information at issue to be disclosed. *See, e.g.*, Crim. Proc. Code arts. 2.139 (detailing right of access to videos made in connection with various types of driving while intoxicated offenses), 2.29 (detailing right of access to written report to law enforcement agency of alleged violation of Penal Code section 32.51); Gov't Code §§ 411.081-.1410 (detailing rights of access to criminal history record information), 560.002(1)(A) (detailing rights of access to fingerprints and other biometric identifiers); Transp. Code §§ 550.065 (detailing rights of access to crash report forms), 724.018 (detailing right of access to blood or breath specimen analysis results). We also note this previous determination does not permit the disclosure of basic information in those instances in which the entirety of the information at issue must be withheld. *See, e.g.*, Fam. Code §§ 58.007 (detailing circumstances under which certain information related to juvenile offenders must be withheld in its entirety), 261.201 (detailing circumstances under which certain information related to investigations of child abuse or neglect must be withheld in its entirety); Open Records Decision No. 393 (1983) (stating, because the identifying information of a sexual assault victim was inextricably intertwined with other releasable information, the governmental body was required to withhold the information in its entirety). We further note this previous determination does not permit the district attorney's office to withhold citations; DIC-24 statutory warnings; DIC-25 notices of suspension; criminal trespass warnings; notices of code violations; triplicate forms; or information subject to section 552.007 or section 552.022 of the Government Code, other than information subject to section 552.022(a)(1). *See* Gov't Code §§ 552.007, .022(a)(1)-(18), .108(a)(1). However, the use of this previous determination does not preclude the district attorney's office from withholding information pursuant to other statutory authority or previous determinations that apply to the district attorney's office. *See, e.g., id.* §§ 552.1175(f), .130(c), .136(c), .147(b); ORD 684.

If the district attorney's office's use of this previous determination does not fall within all of the circumstances delineated above, the requirements of the Act apply, including section 552.301 of the Government Code, and deadlines under the Act run from the date the district attorney's office received the initial written request for information. *See* Gov't Code § 552.301(a); *Mattox*, 767 S.W.2d at 698. Consequently, misapplication of this previous determination may result in the presumption the requested information is public. *See* Gov't Code § 552.302. Thus, if the district attorney's office is unsure as to the applicability of this previous determination to information responsive to a request for information, the district attorney's office should request a ruling from this office. Additionally, this office may modify or withdraw this previous determination for any reason, including, but not limited to, misapplication of this previous determination. *See id.* § 552.011; *Mattox*, 767 S.W.2d at 698; *see also* Open Records Decision Nos. 485 at 3 (1987), 673 at 5. Finally, if the district attorney's office later requests a ruling from this office in response to a second request for the same information from the same requestor, the district attorney's office should notify this office it relied upon this previous determination in its response to the initial request.

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 'J. Behnke', with a horizontal line extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 614664

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Appendix A

(The remainder of this page intentionally left blank.)

Date

Requestor name

Requestor address 1

Requestor address 2

Requestor city, state zip

Dear M:

NOTICE:

On [date], we received your public information request for [description of information requested], dated [date request received] (the “request”). In order to promote governmental efficiency and encourage the prompt release of information, as required by the Public Information Act, we have relied upon Open Records Letter No. 2016-12819 (2016) in responding to your request. We do so within five business days of your request.

The university has made a good faith determination the information you requested:

- deals with the detection, investigation, or prosecution of crime and the release of the records would interfere with the detection, investigation, or prosecution of an open or pending criminal matter.

This information is subject to section 552.108(a)(1) of the Government Code. The university has also determined you have not previously requested this information.³ Therefore, pursuant to the previous determination granted by the Office of the Attorney General in Open Records Letter No. 2016-12819, the university is releasing some information to you, and is withholding the remaining responsive information subject to section 552.108(a)(1) of the Government Code.

Please note, we are withholding the following specified types of information:

- | | |
|---|--|
| <input type="checkbox"/> Incident report (except basic information) | <input type="checkbox"/> Other: (specify documents withheld) |
| <input type="checkbox"/> Witness/suspect interview(s) | _____ |
| <input type="checkbox"/> Video recording(s) | _____ |
| <input type="checkbox"/> Audio recording(s) | _____ |

If you have questions regarding the use of this previous determination, please call the university at XXX-XXX-XXXX, or for more information concerning your rights and the responsibilities of the university , please visit the Office of the Attorney General’s website at <https://www.texasattorneygeneral.gov/og/information-about-552.108a1-previous-determinations>, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. You may also review general information about the Public Information Act, including the types of information included in basic information, in the 2016 Public Information Handbook at http://www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf.

¹ If you request this information a second time, the university must request a ruling from the Office of the Attorney General (the “OAG”) in order to withhold the information. See Open Records Letter No. 2016-12819.