



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2016-20195

Dear Ms. Armstrong:

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# 625436 (Dallas ORR# 2016-13203, 2016-13362).

The Dallas Police Department (the "department") received two requests from different requestors for a specific case number. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.¹

Initially, we note, and the department acknowledges, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from

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.

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 (Tex. App.—Austin 1990, no writ). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). We note section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *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). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the submitted information on the basis of its own interest under section 552.108. However, the need of a governmental body other than the agency that is seeking an open records decision to withhold information under sections 552.103 and 552.108 of the Government Code can provide compelling reasons to withhold information from disclosure. *See* Open Records Decision Nos. 586 at 3 (1991), 469 (1987) (university may withhold information under Gov’t Code § 552.103 predecessor to protect district attorney’s interests in anticipated criminal litigation. Because the department informs us, and provides documentation showing, the Dallas County District Attorney’s Office (the “district attorney’s office”) objects to the release of the information at issue, we will consider whether the department may withhold the submitted information under sections 552.103 and 552.108 on behalf of the district attorney’s office. Furthermore, because sections 552.101 and 552.130 of the Government Code make information confidential, they can provide compelling reasons for non-disclosure, and we will consider the applicability of these exceptions to the submitted information.

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 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 department states the submitted information is related to a pending criminal investigation. The department states the district attorney’s office objects to disclosure of the submitted information because its release would interfere with the investigation. Based on the submitted representations, 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). We note basic information does not include dates of birth or motor vehicle record information protected by section 552.130. See ORD 127. Thus, with the exception of basic information, which must be released, 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.²

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 625436

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure, except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).