



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2016

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

OR2016-21084

Dear Ms. Diaz:

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# 626864 (Dallas Reference No. 2016-05144).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident and information pertaining to a specified location and the surrounding area. 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 representative sample of information.¹

Initially, we note some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-19871 (2015) and 2016-10901 (2016). In Open Records Letter No. 2015-19871, we determined (1) the department may withhold certain information under section 552.108(a)(1) of the Government Code, (2) the department must withhold the dates of birth of living persons

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) the department must release the remaining information. In Open Records Letter No. 2016-10901, we determined (1) the department may rely on Open Records Letter No. 2015-19871 as a previous determination and withhold or release the information at issue in accordance with that ruling; and (2) with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the Dallas County District Attorney's Office (the "district attorney's office"). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the department may rely on Open Records Letter Nos. 2015-19871 and 2016-10901 as previous determinations and withhold or release the identical information in accordance with those rulings. *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 that information is or is not excepted from disclosure). We will address your arguments against disclosure for the information not subject to the previous rulings.

Next, you acknowledge, and we agree, the department failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for the requested information. *See* Gov't Code § 552.301(b), (e). 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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you seek to withhold the submitted information under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the one that failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason under section 552.302. Open Records Decision No. 586 (1991). You assert, and provide documentation showing, the district attorney's office has a law enforcement interest in the submitted information. Therefore, we will consider whether the department may withhold the information at issue on behalf of the district attorney's office under section 552.108.

Section 552.108(a)(1) of the Government Code exempts 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). You provide a representation from the district attorney’s office stating the information at issue relates to an ongoing criminal investigation or prosecution. Based on this representation and our review, we find release of the information at issue 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 department may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

In summary, the department may rely on Open Records Letter Nos. 2015-19871 and 2016-10901 as previous determinations and withhold or release the identical information in accordance with those rulings. The department may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 626864

Enc. Submitted documents

c: Requestor
(w/o enclosures)