



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 8, 2016

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

OR2016-00616

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# 593416 (DPD ORR# 2015-16521).

The Dallas Police Department (the "department") received a request for the 9-1-1 recordings, radio transmissions, and surveillance, dashboard camera, and body worn camera video recordings pertaining to a specified incident. 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.<sup>1</sup>

Initially, we note the request for information is for only 9-1-1 recordings, radio transmissions, and certain types of video recordings. Accordingly, the submitted incident report is not responsive to the request. This ruling does not address the public availability

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<sup>1</sup>This letter ruling assumes that 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).

of any information that is not responsive to the request, and the department need not release such information in response to this request.

Next, the department acknowledges, and we agree, the department did not comply with the procedural requirements of section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold 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 (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). This statutory presumption can generally be overcome when 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).

Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; 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 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the responsive information on the basis of its own interests under section 552.108. However, the need of a governmental body, other than the one that is seeking an open records decision, to withhold information under sections 552.103 and 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision Nos. 586 at 2-3 (1991), 469 (1987) (university may withhold information under Gov't Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). You inform us, and submit correspondence from the Dallas County Criminal District Attorney's Office (the "district attorney's office") demonstrating, the district attorney's office objects to the release of the requested information under sections 552.103 and 552.108. Thus, we will consider whether the department may withhold the submitted information on behalf of the district attorney's office under sections 552.103 and 552.108.

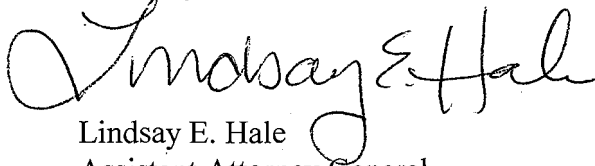
Section 552.108(a) of the Government Code excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). The district attorney's office states it objects to release of the information at issue because it relates to

a pending criminal case. Based on this representation, we conclude the release of the responsive 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we conclude the department may withhold the responsive information under section 552.108(a)(1) on behalf of the district attorney's office.<sup>2</sup>

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/bw

Ref: ID# 593416

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the district attorney's remaining argument except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).