



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767-1748

OR2016-23412

Dear Ms. Sheely:

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# 636611.

The Travis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor and two named individuals. The sheriff's office states it released most of the requested information. 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 information.

We note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-13409 (2016). In that ruling, we determined with the exception of basic information, the sheriff's office may withhold certain information under section 552.108(a)(1) of the Government Code and must withhold a date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the sheriff's office must rely on Open Records Letter No. 2016-13409 as a previous determination and withhold or release the identical information in accordance with that ruling. *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).

Next, you acknowledge, and we agree, the sheriff's office failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for the remaining submitted 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 the sheriff's office seeks to withhold the remaining 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 the Travis County Attorney's Office (the "county attorney's office") has a law enforcement interest in the remaining information. Therefore, we will consider whether the sheriff's office may withhold the remaining information on behalf of the county attorney's office under section 552.108.

Section 552.108(a) 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: (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 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 county attorney's office objects to the release of the remaining information because it pertains to a pending criminal prosecution by the county attorney's office. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and the 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. iv. pp.—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

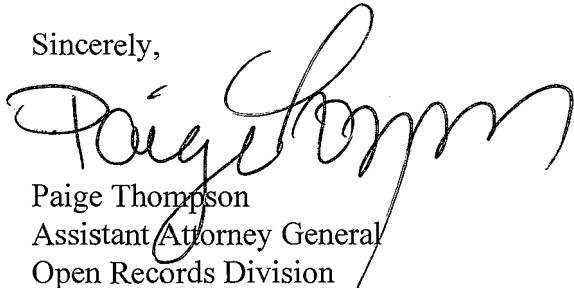
remaining information. Accordingly, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office.

In summary, the sheriff's office must rely on Open Records Letter No. 2016-13409 as a previous determination and withhold or release the identical information in accordance with that ruling. The sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the county 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 636611

Enc. Submitted documents

c: Requestor
(w/o enclosures)