



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Mr. Charles Wallace and Ms. Julie Allen
Attorney and Assistant General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2016-28342

Dear Mr. Wallace and Ms. Allen:

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# 639849 (Ref. No. 1476722394).

The Texas Alcoholic Beverage Commission (the "commission") received a request for any information pertaining to the requestor during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed 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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement

¹Although you do not cite to section 552.152 of the Government Code in your brief to this office, we understand you to raise this section based on the substance of your arguments.

agency possesses information relating to a pending case of a law enforcement agency, the non-law enforcement agency may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and provides this office with a representation from the law enforcement agency that wishes to withhold the information. You inform us, and provide documentation demonstrating, the Collin County District Attorney's Office (the "district attorney's office") objects to the release of the submitted information because it would interfere with a pending investigation and prosecution. Based on these representations and our review, we find 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the names of the arresting and investigating officers but does not include dates of birth. See ORD 127 at 3-5. Accordingly, with the exception of basic information, the commission may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.²

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state some of the remaining information contains the identifying information of an undercover officer in the commission's Enforcement Division and release of the identifying information of this undercover officer would subject the officer to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated release of the information at issue would subject the officer to a substantial threat of physical harm. Accordingly, the commission must withhold the

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.


identifying information of the undercover officer under section 552.152 of the Government Code.³

In summary, with the exception of basic information, the commission may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. In releasing basic information, the commission must withhold the identifying information of the undercover officer under section 552.152 of the Government Code.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/akg

Ref: ID# 639849

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.