



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 9, 2017

Mr. Oscar G. Gabaldón, Jr.  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2017-02952

Dear Mr. Gabaldón:

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# 645046 (City case # 16-1026-7998).

The El Paso Police Department (the "department") received a request for information pertaining to a specified police report. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 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). You state the submitted information pertains to a pending prosecution. Based on this

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines apply to the information at issue. Therefore, we assume you no longer assert these doctrines. *See Gov't Code* §§ 552.301, .302.

representation, 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, 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). Therefore, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

However, we note the requestor is a representative of the Federal Public Defender's Office for the Western District of Texas (the "public defender's office"). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender's office are entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [{"CHRI"}] maintained by the [DPS] that relates to a criminal case in which an attorney compensated by the office of capital and forensic writs or by the public defender's office has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597(1991).

indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). We note the information at issue contains CHRI and the requestor is authorized to obtain the CHRI at issue from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender’s office is appointed. *See id.* §§ 411.1272, .087(a)(2). Although you raise sections 552.103 and 552.108 of the Government Code for such information, a specific statutory right of access prevails over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, if the department determines the information at issue relates to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. If the department determines the information at issue does not relate to a criminal case in which an attorney compensated by the public defender’s office is appointed, then with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In either case, basic information must be released.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 645046

Enc. Submitted documents

c: Requestor  
(w/o enclosures)