



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 21, 2017

Ms. Michelle Buendia  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2017-03808

Dear Ms. Buendia

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# 652022 (DPD Request# 2016-29799 and 2016-23970).

The Dallas Police Department (the "department") received two requests for a specified report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, the department failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for requesting a ruling from this office. *See* Gov't Code § 552.301(b). 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 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.);

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<sup>1</sup>We assume 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.

*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). 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). The department seeks to withhold the submitted information under section 552.108 of the Government Code, but that exception 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 a ruling, to withhold information under section 552.108 can provide a compelling reason to withhold information under section 552.302. Open Records Decision No. 586 (1991). You assert, and provide documentation showing, the Dallas County District Attorney's Office (the "district attorney's office") has a law enforcement interest in the submitted information. Therefore, we will consider whether the department may withhold the submitted information on behalf of the district attorney's office under section 552.108. You also raise section 552.101 of the Government Code, which makes information confidential and provides a compelling reason to withhold information. Accordingly, we will consider the applicability of this exception to 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). You state the information you have marked pertains to an active criminal investigation. Further, the district attorney's office objects to the release of the information at issue because it would interfere with the prosecution of the case. Based upon 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) (delineating law enforcement interests present in active cases), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the marked information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>2</sup> The remaining information must be released.

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<sup>2</sup>As our ruling on is dispositive, we need not address your remaining argument against disclosure.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/sb

Ref: ID# 652022

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)