



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 25, 2017

Ms. Agatha Wade  
Assistant Criminal District Attorney  
Civil Section  
County of Bexar  
101 West Nueva Street, 7<sup>th</sup> Floor  
San Antonio, Texas 78205

OR2017-08731

Dear Ms. Wade:

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# 654450 (ORR# 5478).

The Bexar County District Attorney's Office (the "district attorney's office") received a request for information related to a specified incident report involving a named individual.<sup>1</sup> You state the district attorney's office will withhold social security numbers of individuals other than the requestor's clients pursuant to section 552.147(b) of the Government Code.<sup>2</sup> The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted information.

Initially, we note, and you acknowledge, the district attorney's office has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open

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<sup>1</sup>You state the district attorney's office received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

records decision 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 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, 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). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us, and provide documentation showing, the San Antonio Police Department (the “department”) objects to the release of the information at issue, we will consider whether the district attorney's office may withhold the submitted information under section 552.108 of the Government Code on behalf of the department. Additionally, you raise sections 552.101 and 552.130 of the Government Code for some of the submitted information. Because these exceptions can provide compelling reasons to overcome the presumption of openness, we will also address your arguments under these sections for the information at issue. However, we find you have failed to establish a compelling reason to address your remaining exception.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[,]” unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The department seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the court-filed documents, which we have marked, under section 552.108. However, we will address the remaining arguments against disclosure of the remaining 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, and have provided documentation from the department demonstrating, the submitted information pertains to an active criminal investigation and prosecution. Further, the department objects to release of the information at issue. Based on these representations, we conclude 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. 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 remaining information.

However, we note 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 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code or dates of birth. See ORD 127 at 3-4. Thus, with the exception of the marked court-filed documents, which must be released to this requestor pursuant to section 552.022(a)(17) of the Government Code, and the basic information, which must be released to this requestor, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the department.<sup>3</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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

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<sup>3</sup>We note the requestor has a right of access to the information being released pursuant to section 261.201(k) of the Family Code. See Fam. Code § 261.201(k) (parent of child victim of abuse or neglect not suspected of committing abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (l)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure). If the district attorney's office receives another request for this information from a different requestor, the district attorney's office must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 654450

Enc. Submitted documents

c: Requestor  
(w/o enclosures)