



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2017

Mr. Matthew L. Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2017-13066

Dear Mr. Grove:

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# 662086.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to specified addresses, named individuals, and the requestor during a specified time period. 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 information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the sheriff's office did not meet its procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to determine whether information is excepted from public disclosure under the Act. *See id.* § 552.301(a). Pursuant to section 552.301(b), within ten business days of receipt of the request, the governmental body must ask for a decision from this office and state which exceptions apply to the requested information. *Id.* § 552.301(b). The requestor asserts the sheriff's office did not comply with the requirement that a governmental body must request a decision from this office within ten business days from receipt of a request. We note the sheriff's office states it received the present request for information on March 27, 2017. The requestor asserts the sheriff's office received the request by e-mail on March 6, 2017. However, the sheriff's

office states it did not receive any request by e-mail. The sheriff's office also states, and provides documentation showing, the sheriff's office received an envelope from the requestor postmarked March 22, 2017. The determination of the date the sheriff's office received the request for information is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, based on the sheriff's office's representations and the submitted information, we conclude the sheriff's office received the request on March 27, 2017. Accordingly, the sheriff's office's ten-business-day deadline was April 10, 2017. The sheriff's office submitted its request for a ruling on April 7, 2017. Therefore, we conclude the sheriff's office complied with the requirements of section 552.301(b) of the Government Code. Accordingly, we will address the sheriff's office's arguments against disclosure.

Next, we note a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-07196 (2017). In Open Records Letter No. 2017-07196, we concluded, with the exception of basic information, the sheriff's office may withhold the information at issue under section 552.108(a)(2) of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may continue to rely on Open Records Letter No. 2017-07196 as a previous determination and withhold or release the identical information in accordance with that ruling.¹ *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 information is or is not excepted from disclosure). For the information that is not subject to Open Records Letter No. 2017-07196, we will address your arguments against its disclosure.

Section 552.108(a) 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). Generally, 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 remaining information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the remaining information would interfere with the detection, investigation, or

¹As we are able to make this determination, we do not address your remaining arguments against disclosure of this information.

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).

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 “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information from disclosure under section 552.108(a)(1) of the Government Code.²

In summary, the sheriff's office may continue to rely on Open Records Letter No. 2017-07196 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information from disclosure under section 552.108(a)(1) 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

²As our ruling is dispositive, we do not address the remaining argument against disclosure of this information.

Ref: ID# 662086

Enc. Submitted documents

c: Requestor
(w/o enclosures)