



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 6, 2017

Ms. Michelle Buendia
Assistant City Attorney
City of Dallas
1400 South Lamar Street, 6th Floor, 6W
Dallas, Texas 75215

OR2017-20296

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# 680841 (ORR# 2017-11959).

The Dallas Police Department (the "department") received a request for all information related to a specified automotive accident. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-17235 (2017). In that ruling, we determined: (1) with the exception of the DIC-24 statutory warning form, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office; (2) the department must withhold the dates of birth of living individuals and certain additional information under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the department must withhold certain additional information under section 552.130 of the Government Code; (4) the department must withhold certain additional information under section 552.136 of the Government Code; and (5) the department must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the

department must rely on Open Records Letter No. 2017-17235 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 that information is or is not excepted from disclosure).

Next, we note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code with respect to the submitted information. 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* Gov't Code § 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 Dallas County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the department may withhold the remaining information under section 552.108 of the Government Code on behalf of the district attorney's office. Additionally, you raise sections 552.101, 552.130, 552.136 and 552.137 of the Government Code for portions of the information at issue. Because these sections can provide compelling reasons to overcome the presumption of openness, we will also address your arguments under these sections for the information at issue.

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 remaining information is related to a pending criminal investigation. You have provided documentation from the district attorney's office objecting to the release of the information at issue because release will interfere with the detection, investigation, or prosecution of crime. Based on the submitted representations and our review, we conclude the release of the information at issue

¹As we are able to make this determination, we need not address your arguments against disclosure of this 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, the department may withhold the remaining information you have marked under section 552.108(a)(1) on behalf of the district attorney's office.²

In summary, the department must rely on Open Records Letter No. 2017-17235 as a previous determination and withhold or release the identical information in accordance with that ruling. The department may withhold the remaining information you have marked under section 552.108(a)(1) on behalf of the district attorney's office.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 680841

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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