



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2017

Ms. S. McClellan
Assistant City Attorney
City of Dallas
1400 South Lamar Street, 6FL 6W
Dallas, Texas 75215

OR2017-21784

Dear Ms. McClellan:

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# 676770 (DPD No. 2017-11579).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 and of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code. 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

¹We 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.

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 submitted information under section 552.108 of the Government Code on behalf of the district attorney's office. Additionally, you raise section 552.101 of the Government Code for portions of the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will also consider your argument under this section 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 submitted information pertains to a pending criminal prosecution. 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 these representations and our review, 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 information at issue.

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 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the names of the arresting and investigating officers. *See id.* at 3-4. Thus, with the exception of the basic information, you may withhold the marked information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.²

You seek to withhold the identifying information of undercover officers from the remaining information.³ Section 552.152 of the Government Code provides:

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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the remaining information identifies undercover police officers. You assert release of their identities would jeopardize their safety and subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officers within the information at issue. Accordingly, the department must withhold the identifying information of the undercover officers it marked under section 552.152 of the Government Code.⁴

In summary, with the exception of the basic information, 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. The department must withhold the identifying information of the undercover officers it marked under section 552.152 of the Government Code. The department must release the remaining information.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

⁴As our ruling is dispositive, we need not address your argument against disclosure of this information.

Ref: ID# 676770

Enc. Submitted documents

c: Requestor
(w/o enclosures)