



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Ms. Kristie L. Lewis
Staff Attorney
Houston Police Department
1200 Travis, 21st Floor
Houston, Texas 77002

OR2019-03942

Dear Ms. Lewis:

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# 749836 (ORU No. 18-11830).

The Houston Emergency Center (the "center") received a request for information related to 9-1-1 calls pertaining to specified Houston Police Department (the "department") incidents.¹ We understand some information has been released to the requestor. Although the center takes no position as to the disclosure of the submitted information, it states it notified the department of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹We note the center did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

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). Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information.

The department states Exhibits 2 and 3 pertain to open criminal investigations or prosecutions. Based on this representation, 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). Therefore, the center may withhold Exhibits 2 and 3 under section 552.108(a)(1) of the Government Code on behalf of the department.

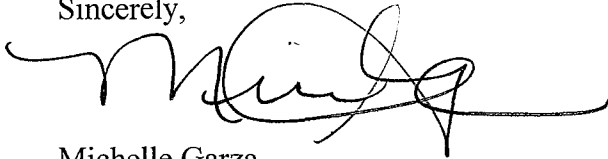
The department further states Exhibits 4 and 5 are related to concluded criminal investigations that did not result in a conviction or deferred adjudication. Based on this representation, we conclude the center may withhold Exhibits 4 and 5 under section 552.108(a)(2) of the Government Code on behalf of the department.

In summary, the center may withhold Exhibits 2 and 3 under section 552.108(a)(1) of the Government Code on behalf of the department. The center may withhold Exhibits 4 and 5 under section 552.108(a)(2) of the Government Code on behalf of the department.

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,

A handwritten signature in black ink, appearing to read 'Michelle Garza', with a large, stylized initial 'M' and a long horizontal flourish extending to the right.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

Ref: ID# 749836

Enc. Submitted documents

c: Requestor
(w/o enclosures)