



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2019

Ms. Valerie Franklin
Legal Assistant
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2019-05906

Dear Ms. Franklin:

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# 759782 (ORR# 19-0582).

The Texas Department of Public Safety (the "department") received a request for information related to a specified incident. The department states it will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2015-27249 (2015).¹ The department also states it will redact certain information pursuant to the previous determination issued in Open Records Letter No. 2001-2047 (2001).² The department also states it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section

¹Open Records Letter No. 2015-27249 authorized the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

²Open Records Letter No. 2001-2047 authorizes the department to withhold criminal history record information maintained under section 411.083 of the Government Code without the necessity of requesting an attorney general decision.

552.147(b) of the Government Code.³ The department states it is releasing some of the requested information. The department claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note, and you acknowledge, the department failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for withholding the requested information. *See* Gov't Code § 552.301(b), (e). 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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the one that failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason sufficient to overcome the presumption of openness. Open Records Decision No. 586 (1991). Because you inform us, and provide documentation showing, the Williamson 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 on behalf of the district attorney's office. Further, you raise sections 552.101 and 552.130 of the Government Code for some of the submitted information. Because these sections can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information.

Section 552.108(a) 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: (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). The department states, and submits documentation demonstrating, the district attorney's office objects to the release of the information you marked because it pertains to a pending criminal prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and the release of the information you marked would interfere with the detection, investigation, or prosecution

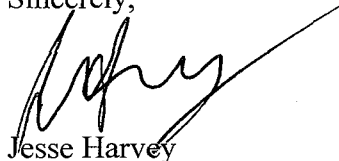
³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 id.* § 552.147(b).

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 information it marked under section 552.108(a)(1) of the Government Code 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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/mo

Ref: ID# 759782

Enc. Submitted documents

c: Requestor
(w/o enclosures)