



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2019-09095

Dear Mr. Kopp:

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# 766294 (COSA File No. W252807).

The City of San Antonio (the "city") received a request for a specified police report. You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the procedural obligations of the city under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code. § 552.301(b). You inform us the city received the request for information on February 20, 2019. You do not inform us the city was closed on any business days between February 20, 2019, and March 6, 2019. Accordingly, the city's ten-business-day deadline for requesting a ruling from this office was March 6, 2019. However, the envelope in which you submitted to this office the information required by section 552.301(b) was postmarked March 13, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common

or contract carrier, or interagency mail). Consequently, we find the city failed to comply with the requirements of 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 id.* § 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.3d 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 have provided documentation showing the Bexar County Criminal District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the city may withhold the information at issue under section 552.108 of the Government Code on behalf of the district attorney's office. Additionally, you raise sections 552.117 and 552.1175 for some of the submitted information. Because these exceptions can provide compelling reasons to overcome the presumption of openness, we will also consider your arguments under these sections for the submitted information.

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). The district attorney's office objects to the release of the submitted information because it pertains to a pending criminal prosecution, and release of the information would interfere with its investigation and prosecution of the case. 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

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 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). Accordingly, with the exception of basic information,

the city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note section 552.117 applies only to information that a governmental body holds in an employment context. The information at issue consists of law enforcement records and, thus, we find the city does not maintain it in an employment capacity. Accordingly, the city may not withhold any of the basic information under section 552.117(a)(1) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Upon review, we find some of the basic information pertains to a peace officer and is not held in an employment capacity by the city. To the extent the peace officer elects to restrict access to the information we marked in accordance with section 552.1175(b), the city must withhold the marked information under section 552.1175 of the Government Code. To the extent the peace officer whose information is at issue does not elect to restrict access to the marked information in accordance with section 552.1175(b), the city may not withhold the marked information under section 552.1175 of the Government Code.

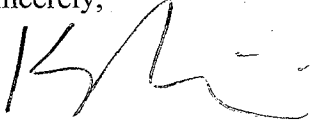
In summary, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. If the peace officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), then, in releasing basic information, the city must withhold the information we marked under section 552.1175 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,

A handwritten signature in black ink, appearing to read 'KH' followed by a stylized flourish.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 766294

Enc. Submitted documents

c: Requestor
(w/o enclosures)