



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2019-28395

Dear Mr. Giles:

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# 790654 (GC No. 26038).

The City of Houston (the "city") received a request for information related to a specified officer-involved shooting. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note you have only submitted the city police department report related to the specified incident. Although you state you submitted a representative sample of information, the submitted information is not representative of all the types of information requested. Please be advised, this open records letter ruling applies only to the type of information the city submitted for our review. This ruling does not authorize the city to withhold any information that is substantially different from the type of information the department submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information is presumed to be public). Accordingly, to the extent the city maintained information responsive to the remaining portions of the request that is substantially different from the type of information submitted to this office on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000)

(if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note, and you acknowledge, the city 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 sufficient to overcome the presumption of openness. See Open Records Decision No. 586 (1991). Because you inform us, and provide documentation showing, the Harris County 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 submitted information under section 552.108 of the Government Code on behalf of the district attorney's office.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. You provide a representation from the district attorney's office, in which the district attorney's office objects to the release of the submitted information because it pertains to closed criminal cases that did not result in conviction or deferred adjudication. Based on this representation, we conclude section 552.108(a)(2) is applicable to the submitted information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Accordingly, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 790654

Enc. Submitted documents

c: Requestor
(w/o enclosures)