



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2019

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1400 South Lamar Street, 6th Floor, 6W
Dallas, Texas 75215

OR2019-28731

Dear Ms. Silver:

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# 798376 (ORR# D023907-081419).

The Dallas Police Department (the "department") received a request for a specified incident report. You state you will release some information to the requestor. We understand you will redact information pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code. *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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797

¹ 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* Gov't Code § 552.147(b).

² We 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 those records contain substantially different types of information than that submitted to this office.

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 552.103 or 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 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 information at issue under sections 552.103 and 552.108 of the Government Code on behalf of the district attorney’s office. Additionally, 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 also consider the applicability of these exceptions to 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 information at issue because it relates to a pending criminal prosecution. Based on this representation, we conclude the release of the information you marked 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. Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.³ As you raise no further exceptions to disclosure, the department must release the remaining information to this requestor.⁴

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴ We note the requestor has a right of access to his own date of birth. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We note this office has previously issued Open Records Letter No. 2017-09757 (2017), a previous determination authorizing the City of Dallas to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, if the department receives another request for this information from a different requestor, the department must withhold the requestor’s date of birth in accordance with the previous determination issued in Open Records Letter No. 2017-09757.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 798376

Enc. Submitted documents

c: Requestor
(w/o enclosures)