



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2020

Mr. Eric Gutierrez
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2020-20684

Dear Mr. Gutierrez:

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# 843649 (Reference# 20-1026-11400).

The El Paso Police Department (the "department") received a request for a specified complete investigative file. You state the department will release basic information pursuant to section 552.108(c) of the Government Code and court-filed documents pursuant to section 552.022(a)(17) of the Government Code. 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 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 the submitted information relates to a pending prosecution.

The requestor, however, argues the department's investigation is closed. Whether or not the information at issue relates to a pending criminal prosecution is a question of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986)*. Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body, or

upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, based on the department's representations, we accept the department's assertion the information at issue relates to a pending criminal prosecution. Accordingly, based upon this representation, we conclude the release of the submitted information 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, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jm

Ref: ID# 843649

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.