



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Mr. Eric L. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2022-00545

Dear Mr. Nguyen:

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# 923811 (Ref. No. M000118).

The City of Houston (the "city") received a request for certain types of communications received by the city from a named individual pertaining to certain individuals during a stated period of time.¹ Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the interests of the Harris County District Attorney's Office (the "district attorney's office"). Accordingly, you state, and provide documentation showing, the city notified the district attorney's office of the request for information and of its right to submit arguments to this office. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the district attorney's office. We have considered the submitted arguments and reviewed the submitted information.

¹ You state, and provide documentation demonstrating, the city sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we note the district attorney's office argues against the release of information the city has not submitted to this office for our review. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review.² *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

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.” *Id.* § 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where an agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration the information relates to the pending case, and (2) a representation from the law enforcement agency stating that it wishes to have the information withheld.

The district attorney's office objects to release of the information at issue under section 552.108(a)(1) of the Government Code. The district attorney's office states the information at issue pertains to an ongoing criminal investigation and asserts its release would interfere with the criminal investigation and prosecution of the case. Based on these representations, 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, 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.³

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

² As we are able to make this determination, we need not address the arguments of the district attorney's office against disclosure of this information.

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

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jm

Ref: ID# 923811

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)