



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 9, 2022

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
1400 Botham Jean Boulevard  
Dallas, Texas 75215

OR2022-03738

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# 929530 (ORR# D032404-100621).

The Dallas Police Department (the "department") received a request for information pertaining to a specified report. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code in requesting this decision. 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

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<sup>1</sup> We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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 submitted information under section 552.108 of the Government Code on behalf of the district attorney's office. Further, as section 552.130 can provide a compelling reason to overcome the presumption of openness, we will consider your argument under this exception.

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 district attorney's office states the information at issue relates to a pending investigation or prosecution, and release of that information would interfere with the investigation and prosecution of the case. Based upon 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 information at issue.

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 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of the reporting party but does not include the identity of the victim, unless the victim is the complainant. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>2</sup>

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. We note the right to privacy is a personal right that lapses at death and does not encompass information that relates only to a deceased person. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F.Supp. 145, 146-47 (N.D. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting RESTATEMENT (SECOND) OF TORTS § 6521 (1977)); *see* Attorney General Opinion JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would

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<sup>2</sup> As we are able to make this determination, we do not address the applicability of section 1701.661(a) to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981). Thus, section 552.130 is not applicable to the driver’s license information of the deceased individual. Accordingly, the department may not withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office. The department must release the remaining information.

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/jxd

Ref: ID# 929530

Enc. Submitted documents

c: Requestor  
(w/o enclosures)