



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 21, 2022

Ms. S. McClellan
Assistant City Attorney
City of Dallas
1400 Botham Jean Boulevard
Dallas, Texas 75215

OR2022-08105

Dear Ms. McClellan:

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# 937827 (ORR# D033777-101821).

The Dallas Police Department (the "department") received a request for the "latest public integrity case log." The department claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, the department acknowledges, and we agree, it did not comply with the requirements of 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 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 the department informs us, and provides documentation showing, the Federal Bureau of Investigation (the "FBI") and the Dallas County District Attorney's Office (the "district attorney's office") object to the release of the information at issue, we will consider whether the department may withhold this information under section 552.108 of the Government Code on behalf of the district

attorney's office. Additionally, because section 552.101 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of this section to the information at issue.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information, which we have marked, was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). The FBI and district attorney's office object to the release of the remaining information marked under section 552.108(a)(1) because it relates to pending criminal investigations. Based on this representation, we conclude the release of this information would interfere with the

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

² As our ruling is dispositive, we do not address the submitted arguments to withhold this information.

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).

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). Basic information refers to the information held to be public in the *Houston Chronicle* decision. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). Thus, with the exception of basic information, the department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code on behalf of the FBI and district attorney's office.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code on behalf of the FBI and 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ba

Ref: ID# 937827

Enc. Submitted documents

c: Requestor
(w/o enclosures)