



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 20, 2022

Ms. Vanessa Hoopingarner
Records Manager
Records Division
North Richland Hills Police Department
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2022-11270A

Dear Ms. Hoopingarner:

Our office issued Open Records Letter No. 2022-11270 (2022) on April 19, 2022. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 19, 2022. *See generally* Gov't Code § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 958460 (ORR# W008982).

The North Richland Hills Police Department (the "department") received a request for information pertaining to a specified incident. The department indicates it is withholding some of the requested information pursuant to section 552.130(c) of the Government Code and Open Records Letter No. 2021-09607 (2021).¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor pursuant to section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2021-09607 authorizes the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

Initially, we note the submitted incident report number 22N04813 is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request.

Next, we must address the procedural obligations of the department under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving a request for information a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The department informs us it received the request for information on January 25, 2022, and was closed on February 3 and 4, 2022. Thus, the department's fifteen-business-day deadline to submit the requested information was January 10, 2022. However, the department did not submit some of the responsive information at issue until March 31, 2022. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we conclude the department has failed to comply with the procedural requirements mandated by section 552.301 regarding this information.²

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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (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 Tarrant County Criminal 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 this information under section 552.108 of the Government Code on behalf of the district attorney's office.

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 department has submitted correspondence from the district attorney's office objecting to the release of the submitted offense report because it pertains to a pending prosecution. The department also states the information it has marked in red in the submitted jail records relates to that pending prosecution. Based on this representation, we conclude the release of this

² We note the department complied with section 552.301 for the submitted jail records.

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, 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 submitted offense report under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. In addition, the department may withhold under section 552.108(a)(1) of the Government Code the information it has marked in red in the submitted jail records.³ The department must release the remaining responsive 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/jm

Ref: ID# 958460

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.