



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2022

Ms. Robyn Katz
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2022-12356

Dear Ms. Katz:

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# 944832 (APD Req. Nos. R003926, R074968, and R075109).

The Austin Police Department (the "department") received two requests from the same requestor for information pertaining to a specified incident involving the requestor. The department states it has released some information to the requestor. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we must address the procedural obligations of the department under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, the department informs us it responded to the requestor's initial request in reliance on the previous determination this office granted the department in Open Records Letter No. 2016-10001 (2016). Open Records Letter No. 2016-10001 authorizes the department to withhold certain information from a requestor under section 552.108(a)(1) of the Government Code in specified circumstances without the necessity of first requesting a ruling from this office. We note, however, Open Records Letter No. 2016-10001 states the department may not rely on the previous determination unless "the department will produce the releasable information to the

requestor pursuant to the requirements of the Act within five business days after the date the request for information was received[.]” The department states, and provides documentation showing, it did not produce information to the requestor within five business days. Thus, the department was not authorized to rely upon Open Records Letter No. 2016-10001 to withhold the information from the requestor under section 552.108 of the Government Code. Accordingly, the department was required to provide the information required by section 552.301(b) within ten business days of the initial request. The department received the initial request for information on August 30, 2018. The department does not inform us it was closed for any business days between August 30, 2018, and September 13, 2018. Thus, the department’s ten-business-day deadline under section 552.301(b) was September 13, 2018. However, the department did not request a ruling from this office until February 22, 2022. *See* Gov’t Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office with regard to the initial request. *See id.* § 552.301(b).

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 Travis County Attorney’s Office (the “county 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 county attorney’s office.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The department and the county attorney’s office seek to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. However, we will address the submitted arguments against disclosure of the remaining information.

Next, we note the remaining information includes information pertaining to the analysis of a blood specimen obtained by a peace officer. Full information concerning the analysis of the specimen must be made available upon the request of the person who has given the specimen at the request of a peace officer. *See* Transp. Code § 724.018. Here, the requestor is the individual who submitted the specimen. The department and county attorney's office seek to withhold this information under section 552.108 of the Government Code. However, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Thus, the department must release the information we have marked to this requestor pursuant to section 724.018 of the Transportation Code.

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[.]” 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 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 a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of another law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The county attorney's office objects to the release of the information at issue because it relates to a pending criminal prosecution, and release of the information would interfere with the prosecution of the case. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *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). We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The DIC-24 and DIC-25 forms have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find the department and county attorney's office have not shown release of these documents will interfere with the detection, investigation, or prosecution of crime, and these documents may not be withheld under section 552.108(a)(1). *See* Gov’t Code § 552.108(a)(1). As the remaining information has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information.

However, we note 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 *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the DIC-24 and DIC-25 forms and the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office.

In summary, the department must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. The department must release the information we have marked pursuant to section 724.018 of the Transportation Code. With the exception of the DIC-24 and DIC-25 forms and the basic information, which must be released, the department may withhold the remaining 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jm

Ref: ID# 944832

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.