



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2022-13926

Dear Mr. Kopp:

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# 947797 (COSA File No. W428941).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident.¹ The city informs us it has released some information to the requestor. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code on behalf of the Bexar County District Attorney's Office (the "district attorney's office"). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note, and the city acknowledges, the city failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for requesting a ruling from this office. *See* Gov't Code § 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

¹ We note the city received an initial request for the same information from this requestor on January 21, 2022. In response to the initial request, the city informs us it released basic information to the requestor within five business days and withheld certain information under section 552.108(a)(1) of the Government Code, pursuant to the previous determination this office issued to the city in Open Records Letter No. 2017-02535 (2017). Subsequently, the requestor made a second request for the same information on February 9, 2022.

² 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.

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 city informs us the district attorney’s office objects to the release of the information at issue, we will consider whether the city may withhold the submitted information under section 552.108 of the Government Code on behalf of the district attorney’s office. Further, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address your argument under this exception for the information at issue.

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 city states, and provides documentation demonstrating, the district attorney’s office has advised the city the information at issue is related to a pending criminal prosecution and objects to disclosure of the information at issue because its release would interfere with the prosecution. Based on these representations and our review, 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, we conclude section 552.108(a)(1) is applicable to the submitted 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 basic information, which the city informs us has been released, 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.

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information, including the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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/be

Ref: ID# 947797

c: Requestor