



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2022

Ms. Shirley Smith
Records Clerk
City of Nacogdoches
P.O. Drawer 635030
Nacogdoches, Texas 75963-5030

OR2022-19519

Dear Ms. Smith:

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# 957621 (Ref. No. P21-17048).

The City of Nacogdoches (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code 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(a), (b). In this instance, you state, and submit documentation demonstrating, the city received the request for information on April 11, 2022. Accordingly, the city's ten-business-day deadline was April 25, 2022. However, the envelope in which you requested a ruling from this office is postmarked April 26, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the city failed to comply with the requirements of section 552.301 in requesting this decision from our office.

¹ Although you do not raise section 552.130 of the Government Code in your brief, we understand the city to assert this exception based on your markings.

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 you inform us the Nacogdoches County District Attorney's Office (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. Additionally, you raise section 552.130 of the Government Code for some of the submitted information. Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will also address your argument under this section 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 district attorney's office states the information at issue relates to a pending 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. Accordingly, the city may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.²

Section 552.130 of the Government Code provides 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 is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. Further, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recording. *See generally* Occ. Code § 1701.661(a), (e).

In summary, the city may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The city 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 957621

Enc. Submitted documents

c: Requestor
(w/o enclosures)