



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 20, 2022

Mr. Joe R. Zapata  
HPD Administration Manager  
Houston Police Department  
1200 Travis, 10th Floor  
Houston, Texas 77002-6000

OR2022-28894

Dear Mr. Zapata:

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# 973776 (Reference No. P032275-070122).

The Houston Police Department (the "department") received a request for certain information pertaining to a specified incident. You state you do not have information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends the department failed to comply with section 552.301 of the Government Code in seeking a decision from this office. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the department. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup> We assume 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.

state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d).

You state, and provide documentation demonstrating, the department received the request for information on July 1, 2022. You also state the department was closed for business on July 4, 2022. We note this office does not count the date the request was received, weekends, dates the office was closed, or holidays, including skeleton crew days observed by a governmental body, for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was July 18, 2022. Upon review, we find the department timely provided the information required by section 552.301(b) of the Government Code. *See Gov't Code* § 552.301(b); *see also id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, we note the correspondence the department submitted to this office reflects the requestor was copied on the correspondence. Thus, upon review, we find the department complied with the procedural requirements mandated by section 552.301(d) of the Government Code. Therefore, we will address the department's argument against disclosure of the information at issue.

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). The department states the submitted information pertains to an open and active criminal prosecution. 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 submitted information. Therefore, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/pt

Ref: ID# 973776

Enc. Submitted documents

c: Requestor  
(w/o enclosures)