



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2009

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2009-12516

Dear Ms. Armstrong:

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# 354381 (ORR 2009-3729 and 2009-3903).

The Dallas Police Department (the "department") received two requests from the same requestor for information related to a specific incident. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, 552.108, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you inform this office that some of the requested information was the subject of a previous request received by the department, as a result of which this office issued Open Records Letter No. 2009-08604 (2009). We have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based. We therefore conclude that the department may continue to rely on Open Records Letter No. 2009-08604 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001)

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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>2</sup>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.

(so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information is not the precise information previously ruled upon, we will address your arguments against disclosure.

We note, and you acknowledge, that the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). The department also failed to comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e)(1). The information at issue is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *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); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim an exception to disclosure under section 552.108 of the Government Code, which is discretionary and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). The Dallas County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information. Therefore, we will determine whether the department may withhold any of the information at issue under section 552.108 on behalf of the district attorney. Because sections 552.101, 552.107(2), and 552.130 of the Government Code can also provide compelling reasons to overcome the presumption of openness, we will consider your arguments under these exceptions as well.

The district attorney seeks to withhold the remaining submitted information under section 552.108 of the Government Code. Section 552.108(a) 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the district attorney states that the remaining information relates to a pending criminal investigation and prosecution. The district attorney requests the information at issue be withheld because release of these records at this time will interfere with its ability to prosecute this case. Based upon these representations and our review, we conclude 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the information at issue under section 552.108(a)(1).

In summary, the department may continue to rely on Open Records Letter No. 2009-08604 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The department may withhold the remaining submitted information on behalf of the district attorney under section 552.108(a)(1).<sup>3</sup>

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 354381

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As we are able to make this determination, we need not address the remaining claimed exceptions, except to note that, generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).