



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2010

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-01225

Dear Mr. Reyna:

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# 369083 (COSA File No. 2009-4579).

The San Antonio Police Department (the "department") received a request for five categories of information pertaining to a specified incident. Although the department takes no position on the public availability of the submitted information, you inform us that the Bexar County Criminal District Attorney's Office (the "district attorney") asserts an interest in the information. We have received arguments from the district attorney. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered the district attorney's arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request because it was created after the date of the request. This ruling does not address the public availability of information that is not responsive to the request, and the department is not required to release that information in response to the request.

Next, we note, and you acknowledge, the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this

office. *See id.* § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Further, the interests 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 Nos. 586 (1991), 469 (1987). You inform us, and provide documentation reflecting, the district attorney asserts a law enforcement interest in the submitted information under section 552.108. Therefore, we will consider whether the department may withhold the responsive information on behalf of the district attorney on that basis.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted a statement from the district attorney objecting to the release of the responsive information because it relates to an open criminal case and the matter is “currently awaiting indictment.” Based upon this representation, we conclude that 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), *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).

However, 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 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code.¹

¹We note the basic information includes the arrestee’s social security number, which may be redacted pursuant to section 552.147 of the Government Code. Section 552.147(b) authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision

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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 369083

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

from this office under the Act.