



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2012

Ms. Myra K. Morris
For 79th Judicial District Attorney's Office
Royston, Rayzor, Vickery & Williams, L.L.P.
1300 Frost Bank Building
802 North Carancahua
Corpus Christi, Texas 78401-0021

OR2012-12377

Dear Ms. Morris:

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# 461184 (DA# 46,769).

The 79th Judicial District Attorney's Office (the "district attorney's office"), which you represent, received two requests for information, including a specified letter, concerning a named individual and a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.114, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we note you have redacted information that you state is not responsive to the request. This ruling does not address the public availability of information that is not

¹Although you raise section 552.021 of the Government Code, we note this section requires public information to be made available during normal business hours and is not an exception to disclosure. However, based on the substance of your argument, we understand you to claim section 552.147 of the Government Code.

responsive to a request, and the district attorney's office is not required to release non-responsive information.

Next, we address your procedural obligations under the Act, and the requestor's argument that the district attorney's office failed to meet its deadlines in asking this office for a ruling. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body that receives a request for information it wishes to withhold under one of the exceptions to disclosure must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). Additionally, under section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The district attorney's office received the requests on May 16 and May 17, 2012. Thus, the 10- and 15-business-day deadlines were as follows: May 31 and June 7, 2012, as to the first request; and June 1 and June 8, 2012, as to the second request. Upon review, we find the district attorney's office did not raise sections 552.114, 552.130, and 552.147 of the Government Code until June 7 and June 8, respectively. Accordingly, we find the district attorney's office failed to comply with the procedural requirements under the Act in raising these exceptions, but otherwise complied with its deadlines.

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 information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Your claims under sections 552.114 and 552.130 of the Government Code can provide compelling reasons for non-disclosure; therefore we will consider the applicability of these exceptions to the submitted information. We also will consider the applicability of your timely raised exceptions.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the submitted information relates to the investigation of an individual that the district attorney's office has chosen not to prosecute. Thus, you argue the investigation concluded and did not result in a conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) is applicable, and the district attorney's office may withhold the specified letter from the second requestor on that basis.

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). We note you seek to withhold the entire narrative portion of the report from the first requestor. Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense and the social security number of an arrested person. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include driver's license information that is subject to section 552.130 of the Government Code. Accordingly, with the exception of basic information, which must include a sufficient portion of the narrative to encompass a detailed description of the offense, the district attorney's office may withhold the submitted information from the first requestor under section 552.108(a)(2) of the Government Code.²

In summary, the district attorney's office may withhold the specified letter from the second requestor under section 552.108(a)(2) of the Government Code. As to the first requestor, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.³

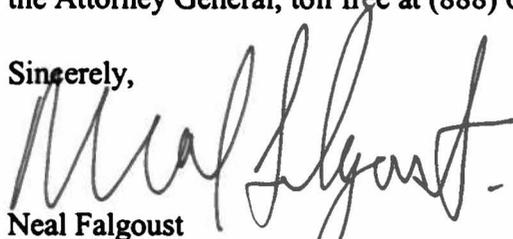
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²As our ruling is dispositive, we do not address your remaining arguments against disclosure.

³We note 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.

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a horizontal line at the end.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 461184

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)