



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2013

Mr. Michael L. Garza
Assistant District Attorney
County of Hidalgo
100 North Closner, Room 303
Edinburg, Texas 78539

OR2013-07016

Dear Mr. Garza:

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# 485595.

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for any documents, records, or correspondence relating to the Harwell shooting investigation in Edinburg on December 11, 2011. You state you have released some information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us some of the requested information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2012-14054 (2012) and 2012-12678 (2012). In Open Records Letter No. 2012-14054, we concluded, with the exception of basic information, the sheriff's office may withhold the investigation file regarding the shooting under section 552.108(a)(1) of the Government

¹We 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.

Code. In Open Records Letter No. 2012-12678, we concluded the sheriff's office may withhold 9-1-1 tapes on behalf of the Hidalgo County District Attorney's Office (the "district attorney's office") under section 552.108(a)(1) of the Government Code. We understand the law, facts, and circumstances on which the prior rulings were based have not changed. Therefore, to the extent the information at issue is identical to the information ruled on in those rulings, we conclude the sheriff's office may rely on Open Records Letter Nos. 2012-14054 (2012) and 2012-12678 (2012) as previous determinations and withhold the identical information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (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). However, to the extent the information at issue is not encompassed by the previous determinations, we will consider your argument.

Next, we must address the sheriff's office's procedural obligations under the Act. Section 552.301 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) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the sheriff's office received the request for information on February 4, 2013. You state the sheriff's office was closed on February 18, 2013 in observance of President's Day. We note this office does not count holidays for purposes of calculating a governmental body's deadlines under the Act. Thus, the ten-business-day deadline for requesting a ruling from this office was February 19, 2013. However, the envelope in which you requested a ruling from this office bears a postmark of February 20, 2013. *See id.* § 552.308 (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption 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); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, this is a discretionary exception that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in

general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 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). You state the district attorney's office asserts law enforcement interests in the submitted information. Therefore, we will consider whether the sheriff's office may withhold the submitted information on behalf of the district attorney's office under section 552.108.

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 has submitted arguments to this office objecting to the release of the submitted information because it relates to an ongoing criminal prosecution. Based upon these representations and our review, we determine that 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, we find section 552.108(a)(1) of the Government Code is applicable to the information at issue.²

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you have already released, the sheriff's office may withhold the information at issue on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may rely on Open Records Letter Nos. 2012-14054 (2012) and 2012-12678 (2012) as previous determinations and withhold or release the identical information in accordance with those rulings. With the exception of basic information, the sheriff's office may withhold the information at issue on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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 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 'Thana Hussaini', with a long horizontal stroke extending to the right.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 485595

Enc. Submitted documents

c: Requestor
(w/o enclosures)