



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2013

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

OR2013-12229

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# 493316 (ORR# 2013-05186).

The Dallas Police Department (the "department") received a request for eight categories of information regarding a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-01877 (2013). In that ruling, we held the department may withhold the

¹Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this section based upon your markings.

²We 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.

information you marked under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the department may continue to rely on Open Records Letter No. 2013-01877 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). However, we will address the arguments for the remaining information not subject to Open Records Letter No. 2013-01877.

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 reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you represent the information you have marked relates to a pending criminal investigation and prosecution. Further, you indicate this case has been submitted to the grand jury for review. Based upon your representations, we conclude release of the information you have marked will 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). Accordingly, we find the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.³ The remaining information must be released.

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.texasattorneygeneral.gov/open/>

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

[url_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 493316

Enc. Submitted documents

c: Requestor
(w/o enclosures)