



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2013

Mr. Randy Reynolds
District Attorney
143rd Judicial District Attorney's Office
P.O. Box 2012
Pecos, Texas 79772

OR2013-21683

Dear Mr. Reynolds:

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# 508434.

The 143rd District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified automobile accident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you indicate the requested information was the subject of a previous ruling issued by this office, and the district attorney's office wishes to rely on Open Records Letter No. 2013-07673 (2013) as a previous determination. However, Open Records Letter No. 2013-07673 was issued to the Pecos Police Department (the "department"), not the district attorney's office. As such, the district attorney's office may not rely on Open Records Letter No. 2013-07673 as a previous determination for the requested information. *See* Open Records Decision No. 673 (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).

Next, we must address the district attorney's office's failure to comply with the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of

receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code § 552.301(e). You state the district attorney's office received the request at issue on September 27, 2013. Therefore, the district attorney's office's deadline for submitting the information required by section 552.301(e) was October 18, 2013. However, the postmark date on the envelope containing the information required by section 552.301(e) is November 19, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district attorney's office failed to comply with section 552.301.

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 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; *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); *also see* Open Records Decision No. 630 (1994). Although you raise section 552.108 of the Government Code as an exception to disclosure, this section is a discretionary exception that only protects a governmental body's interest 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 section 552.108 subject to waiver).

However, the interests of a governmental body, other than the one failing 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 have provided a letter from the department stating its objection to the release of the submitted information under section 552.108 of the Government Code. Therefore, we will determine whether the district attorney's office may withhold the submitted information on behalf of the department under section 552.108.

Next, we note some of the submitted information, which we have marked, consists of court documents subject to section 552.022(a)(17) of the Government Code, which provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the department objects to disclosure of this information under section 552.108 of the Government Code, as noted above, this section is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.108;

ORDs 665, 177. Therefore, the district attorney's office may not withhold the marked court documents under section 552.108 on behalf of the department. However, we note a portion of these records is subject to section 552.101 of the Government Code, which can make information confidential under the Act.¹ Therefore, we will address the applicability of section 552.101 to the information subject to section 552.022(a)(17).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the district attorney's office must withhold the fingerprint we have marked in the court-filed documents subject to section 552.022(a)(17) of the Government Code under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

We now address section 552.108 of the Government Code for the remaining information not subject to section 552.022. 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[.]" *Id.* § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted a letter from the department stating the remaining information pertains to a pending criminal investigation. Based on this representation and our review of the information, we find release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, 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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear

¹The Office of the Attorney General will raise a mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the department.

In summary, with the exception of the fingerprint we have marked, which the district attorney's office must withhold under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, the district attorney's office must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the department.

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/orl_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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eb

Ref: ID# 508434

Enc. Submitted documents

c: Requestor
(w/o enclosures)