



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2014

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

OR2014-00109

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# 513573 (DPD ORR# 2013-11738 and 2013-13185).

The Dallas Police Department (the "department") received two requests for information pertaining to a specified incident. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You acknowledge the department failed to meet the ten-business-day deadline prescribed by section 552.301(b) of the Government Code in requesting an open records decision from this office following the receipt of the first request. *See Gov't Code* § 552.301(b). We note the department also failed to comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of

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.

section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you raise section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* ORD 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 of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You provide a representation that the Dallas County District Attorney's Office (the "district attorney's office") asserts section 552.108 of the Government Code. Therefore, we will consider the whether the information at issue may be withheld on behalf of the district attorney's office under section 552.108. Furthermore, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the information at issue.

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 the 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). You state the submitted information pertains to a pending criminal prosecution. Additionally, the district attorney's office objects to release of the information. Therefore, we conclude release of the information you have marked 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 interest that are present in active cases).

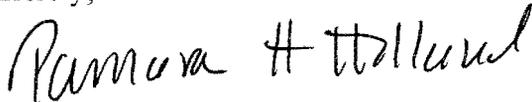
However, we note, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-7; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes an arrestee's social security number. Thus, with the exception of basic information, the department may withhold the information

you have marked under section 552.108(a)(1) of the Government Code.² The department must release the remaining 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.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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/akg

Ref: ID# 513573

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²Although basic information includes an arrestee's social security number, 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. Gov't Code § 552.147(b). As our ruling is dispositive, we need not address your remaining argument.