



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2014

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

OR2014-11873

Dear Ms. Diaz:

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# 527234 (Dallas ORR# 2014-02740).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You state the department has released some of the requested information. You claim 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.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

No. 2013-19898 (2013). In that ruling, we determined the department may withhold the requested video recordings under section 552.108(a)(1) of the Government Code on behalf of the Dallas County District Attorney's Office (the "district attorney's office"). However, the present requestor contends the department has since released certain responsive video recordings to the media. Pursuant to section 552.303 of the Government Code, this office requested you provide additional information regarding the requestor's assertion that some of the responsive video recordings were previously released. *See id.* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render decision). In your response to this office, you state the department did previously release such information to the media. As to the video recordings that were at issue in the previous ruling and have not been released, there is no indication the law, facts, or circumstances on which the prior ruling was based have changed as to such recordings. Thus, with regard to the video recordings that were at issue in the previous ruling and have not been released, the department may continue to rely on Open Records Letter No. 2013-19898 as a previous determination and withhold that information in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, as to the video recordings that were at issue in the previous ruling and have since been released, we find circumstances have changed as to such video recordings and the department may not withhold such information in accordance with the previous ruling. *See id.* We note the Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Although you claim these video recordings are excepted from disclosure under section 552.108 of the Government Code and submit to our office a representation from the district attorney's office objecting to release of the information, we note section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department has waived the claim under section 552.108 and may not withhold the video recordings that have been previously released on this basis. As you do not claim the release of any such video recordings is expressly prohibited by law or the information is otherwise confidential by law, the department must release the previously released video recordings, which we have indicated, to this requestor. Because the remaining information you have submitted was not at issue

in the previous ruling and has not been previously released, we will address your argument against disclosure of this information.

Next, the requestor contends, the department acknowledges, and we agree, the department failed to comply with the requirements of section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b), (e). 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 unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise section 552.108 of the Government Code, as previously noted, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3. Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the remaining information on the basis of its own interests under section 552.108. However, the need of a governmental body, other than the one seeking an open records decision, to withhold information under section 552.108 can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 at 2-3 (1991). As previously discussed, you inform us, and submit correspondence from the district attorney's office which reflects, the district attorney's office objects to the release of the information at issue. Thus, we will address whether the department may withhold the remaining information on behalf of the district attorney's office under section 552.108.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See*

Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). You state the information at issue relates to a pending prosecution. You have submitted correspondence from the district attorney's office in which the district attorney's office objects to the release of the information at issue. Based upon your representation and our review, we conclude release of the submitted information would interfere with law enforcement. *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, section 552.108(b)(1) is applicable to the submitted information.

We note, however, section 552.108 of the Government Code 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 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, which you state the department has released, the department may withhold the remaining information you have marked under section 552.108(b)(1).

In summary, the department may continue to rely on Open Records Letter No. 2013-19898 as a previous determination and, in accordance with that ruling, withhold the video recordings that were at issue in the previous ruling and have not been released. With the exception of the basic information and the video recordings that have been previously released, the department may withhold the remaining information you have marked under section 552.108(b)(1) of the Government Code. The department must release the remaining information.<sup>2</sup>

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.

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<sup>2</sup>We note the remaining information contains social security numbers. 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). The requestor has a right, however, to her client's social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We also note the requestor has a right of access beyond that of the general public to additional information belonging to her client that is being released. *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Accordingly, if the department receives another request for this information from an individual other than this requestor or her client, the department must again seek a ruling from this office.

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](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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 527234

Enc. Submitted documents

c: Requestor  
(w/o enclosures)