



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2014

Ms. Bobbie Parrett
Records Clerk
Bellmead Police Department
701 Maxfield
Bellmead, Texas 76705

OR2014-14986

Dear Ms. Parrett:

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# 534166.

The Bellmead Police Department (the "department") received a request for incident report number 14-00314. The department received a separate request for incident report number 14-00314 and incident report number 14-00700.¹ You claim that the 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 information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See Gov't Code § 552.301(e)*. Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated 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

¹As you did not submit the second request for information, we take our description from your brief.

information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The department states it received both requests for information on June 13, 2014. Thus, the department was required to submit the documentation required by section 552.301(e) by July 7, 2014. However, the department has not submitted the second request letter and incident report number 14-00700. Consequently, the department did not comply with section 552.301 with respect to incident report number 14-00700.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, 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. Open Records Decision No. 150 at 2 (1977). Although the department asserts incident report number 14-00700 is excepted under section 552.108 of the Government Code, this is a discretionary exception and serves only to protect a governmental body's interests, and may be waived. As such, this section does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5, 663 at 5, 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301 in regard to incident report number 14-00700, the department has waived its claim under 552.108 for such information, and that incident report must be released.

We now turn to your argument under section 552.108(a)(1) of the Government Code for incident report number 14-00314. Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 14-00314 relates to a pending criminal investigation. Based on this representation, we conclude that release of this information 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

We note that 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. The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the department may withhold incident report number 14-00314 under section 552.108(a)(1) of the Government Code.

In summary, the department must release incident report number 14-00700. With the exception of basic information, which must be released, the department may withhold incident report number 14-00314 under section 552.108(a)(1) of the Government Code.

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/bhf

Ref: ID# 534166

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)