



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 13, 2016

Ms. Halfreda Anderson-Nelson  
Public Information Officer  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2016-15881

Dear Ms. Anderson-Nelson:

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# 618795 (ORR# W000726-042816).

Dallas Area Rapid Transit ("DART") received a request for the complete internal affairs investigation file involving a named officer.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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,

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<sup>1</sup>DART sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must 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 submitted information relates to a pending criminal prosecution. Based upon your representation, we conclude release of the information at issue 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). Therefore, we find section 552.108(a)(1) of the Government Code is applicable to the submitted information.

We note the requestor states she represents an individual who the requestor contends has a right of access to the requested information pursuant to section 552.023 of the Government Code. Section 552.023 provides, in pertinent part, that “[a] person or a person’s authorized representative has a special right of access, beyond that of the general public, to information held by a governmental body . . . that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a). We note, however, a governmental body may assert as grounds for denial of access other provisions of the Act or other law that is not intended to protect the person’s privacy interests. *See id.* § 552.023(b). In this instance, we have determined section 552.108 of the Government Code is applicable to the information at issue. This exception is not intended to protect the privacy interests of any individuals; rather, it protects the governmental body’s interests. *See id.* § 552.108 (section 552.108 intended to protect criminal law enforcement and prosecutorial interests). Thus, section 552.023 does not provide a special right of access to information excepted from disclosure under section 552.108. Consequently, section 552.023 does not provide the requestor a special right of access to the information at issue. Accordingly, we find DART may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

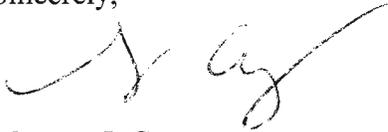
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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, appearing to read 'Meagan J. Conway', is written over a light blue horizontal line.

Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/bw

Ref: ID# 618795

Enc. Submitted documents

c: Requestor  
(w/o enclosures)