



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2016

Ms. Donna L. Clarke  
Assistant Criminal District Attorney  
Civil Division  
Lubbock County District Attorney's Office  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2016-21575

Dear Ms. Clarke:

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# 633688.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. 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, we must address the sheriff's office's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, the sheriff's office received the request for information on August 16, 2016. Accordingly, the sheriff's office's ten-business-day deadline was August 29, 2016. This office received the sheriff's office's request on September 6, 2016. The envelope in which you submitted the request for a ruling under section 552.301 does not bear a date-stamped post meter mark. *See id.* § 552.308(a), (b) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Consequently, we find the sheriff's office failed to comply with section 552.301 of the Government Code.

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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); *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. Section 552.108 is a discretionary exception to disclosure and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, in failing to comply with section 552.301, the sheriff's office has waived its argument under section 552.108 and may not withhold the submitted information on the basis of its own interest under section 552.108. However, the need of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure under section 552.302. Open Records Decision No. 586 (1991). The Lubbock County District Attorney's Office (the "district attorney's office") has provided a statement objecting to the release of the requested information under section 552.108. Therefore, we will consider whether the sheriff's office may withhold the requested information under section 552.108 on behalf of the district attorney's office.

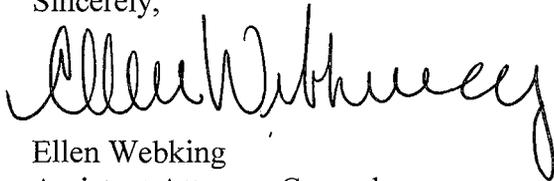
Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must 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). The district attorney's office states the submitted information relates to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the submitted 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. 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(a)(1) is applicable to the submitted information.

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 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the sheriff’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 633688

Enc. Submitted documents

c: Requestor  
(w/o enclosures)