



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2017

Mr. Alan T. Ozuna
Counsel for the City of Pharr
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.
701 East Harrison, Suite 100
Harlingen, Texas 78550-9165

OR2017-05563

Dear Mr. Ozuna:

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# 649308.

The City of Pharr (the "city"), which you represent, received a request for the following categories of information pertaining to a specified incident: (1) written documentation showing the officers are on administrative leave; (2) photographs and badge numbers of the officers involved; (3) photographs of the knife; (4) an explanation of the Texas Rangers' involvement; and (5) a transcript of the audio recording of the 9-1-1 call. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Initially, we note the city has submitted information beyond the categories of information requested; therefore, this information, which we have indicated, is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release such information in response to this request.

Next, we note the city has not submitted information responsive to the portion of the request seeking photographs of the officers involved in the incident. Thus, to the extent such information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental

body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, the city states some of the responsive information was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2017-05407 (2017). In Open Records Letter No. 2017-05407, we ruled, with the exception of basic information, the city may withhold the responsive information under section 552.103 of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based has changed, the city may continue to rely on Open Records Letter No. 2017-05407 as a previous determination and withhold the identical 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). For the information that is not subject to Open Records Letter No. 2017-05407, we will consider the city's arguments against disclosure.

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). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, we note the remaining responsive information consists of personnel records. We note, however, section 552.108 is generally not applicable to internal personnel records that are purely administrative in nature and that do 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, 525-26 (Tex. Civ. 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Where a governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration that the information relates to a pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The city inform this office the Texas Rangers object to release of the information at issue because release would interfere with a pending criminal investigation and prosecution. Based on this representation, we conclude section 552.108(a)(1) is applicable in this instance. *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). Accordingly, the city may withhold the remaining responsive information on behalf of the Texas Rangers under section 552.108(a)(1) of the Government Code.¹

In summary, the city may continue to rely on Open Records Letter No. 2017-05407 as a previous determination and withhold the identical information in accordance with that ruling. The city may withhold the remaining responsive information on behalf of the Texas Rangers 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 649308

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the city's remaining argument against disclosure of this information.