



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 18, 2017

Ms. Caitlin Sedano  
Administrative Assistant  
City of Harker Heights  
402 Indian Trail  
Harker Heights, Texas 76548

OR2017-10825

Dear Ms. Sedano:

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# 658276.

The City of Harker Heights (the "city") received nine requests from the same requestor for information pertaining to three separate incidents. You inform us the city will release some information upon receipt of proper payment. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). You state the city received the first four requests for information on February 24, 2017, March 7, 2017, and March 8, 2017. Thus, the city's ten-business-day deadlines to raise exceptions to disclosure for information responsive to the first requests were March 10, 2017, March 21, 2017, and March 22, 2017, respectively. You also state the city received five additional requests for information from the same requestor on April 17, 2017. Some of the information the city submitted as responsive to the five additional requests was also responsive to the first four requests. The city did not raise section 552.103 of the Government Code for the information at issue until it submitted the additional five requests for information to our office in its request for a

ruling on April 28, 2017. *See id.* § 552.308(a)(1) (describing 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 city failed to comply with section 552.301(b) of the Government Code in raising section 552.103 of the Government Code with respect to the information responsive to the first four requests for information.

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 waiver of the claimed exception. *See id.* § 552.302. You assert section 552.103 of the Government Code for the information at issue. However, this section is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.— Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the city may not withhold the information responsive to the first four requests for information under section 552.103 of the Government Code. Nevertheless, we will consider section 552.103 for the information not responsive to the first four requests for information. Further, we will consider the city's assertion of section 552.108 of the Government Code, which was timely raised, for all of the submitted information.

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, 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 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). You state the information at issue relates to a pending criminal investigation and prosecution. Based on your representation and our review, we find release of most of the information at issue 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).

We note, however, the information at issue includes criminal trespass warnings. Because copies of these documents were provided to the persons who were cited, we find their release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the criminal trespass warnings, which we have marked for release, under section 552.108(a)(1) of the Government Code. However, we find section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred

adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.*; *see also id.* § 552.301(e)(1)(A). You state the information at issue relates to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representation, we find section 552.108(a)(2) is applicable to this information.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information and the submitted criminal trespass warnings, which the city must release, the city may withhold the information we have marked for withholding under section 552.108(a)(1) of the Government Code and the information we have marked for withholding under section 552.108(a)(2) of the Government Code.<sup>1</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.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information, except to note section 552.103 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Open Records Decision No. 597 (1991).

Ref: ID# 658276

Enc. Submitted documents

c: Requestor  
(w/o enclosures)