



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2017

Ms. Sandra Passailaigue
City Secretary
City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238

OR2017-24022

Dear Ms. Passailaigue:

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# 680854 (ORR# 080817-A).

The City of Leon Valley (the "city") received three separate requests for information pertaining to specified commercial properties during specified time ranges. 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.

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 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). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 (1988), 287 (1981)*. This section is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See Open Records Decision No. 199 (1978)*. An agency that does not qualify as a law enforcement agency may, under limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g., Attorney General Opinion*

MW-575 (1982); Open Records Decision Nos. 493, 272 (1981). If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1); Attorney General Opinion MW-575; Open Records Decision Nos. 493, 372 at 4 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to incident), 272.

Upon review, we find the submitted information pertains to code compliance violations under investigation by the city's community development department, fire department, or health department (the "departments"). However, you have not demonstrated the departments are law enforcement agencies for purposes of section 552.108, nor informed us if the information at issue has been forwarded to an appropriate law enforcement agency. Therefore, we find you have failed to demonstrate section 552.108(a)(1) is applicable to the submitted information, and it may not be withheld on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.¹ *See* Gov't Code § 552.117(a)(1). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city office must withhold the marked cellular telephone numbers under section 552.117(a)(1) of the Government Code if the cellular telephone services are not paid for by a governmental body. However, if the individuals whose information is at issue did not timely request confidentiality under

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.024 of the Government Code, of if the cellular telephone services are paid for by a governmental body, the city may not withhold this information under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

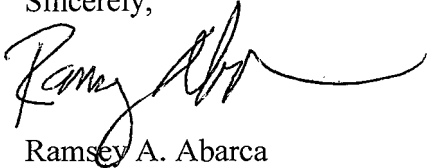
In summary, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked cellular telephone numbers under section 552.117(a)(1) of the Government Code if the cellular telephone services are not paid for by a governmental body. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", with a long horizontal flourish extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/gw

Ref: ID# 680854

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)