



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Ms. Lynn Trumbul
Senior Assistant City Secretary
City of Hutto
401 West Front Street
Hutto, Texas 78634

OR2019-10429

Dear Ms. Trumbul:

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# 760188 (Ref. No. R000429-020619).

The City of Hutto (the "city") received a request for information related to a specified incident.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code, which provides, in relevant part:

¹We note you 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).

²Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on your markings.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation subject to section 552.022(a)(1). This information must be released unless it is excepted from disclosure under section 552.108 of the Government Code, or is made confidential under the Act or other law. *See id.* Although you assert the information at issue is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary 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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under section 552.108 for the submitted information. Additionally, as sections 552.101 and 552.130 of the Government Code make information confidential, we will consider your arguments under sections 552.101 and 552.130 for the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based upon this representation and the submitted documentation, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, the city may withhold the information you have marked under section

552.108(a)(2) of the Government Code.³ As you raise no further exceptions to disclosure, the city must release the remaining information to this requestor.⁴

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴We note the requestor has a right of access to some of the information being released. *See* Gov't Code §§ 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles), 552.137(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Furthermore, we note Open Records Letter No. 2018-29623 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. Finally, we note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting a decision from this office.

Ref: ID# 760188

Enc. Submitted documents

c: Requestor
(w/o enclosures)