



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P. O. Box 61429
Houston, Texas 77208-1429

OR2019-19227

Dear Ms. Hojem:

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# 775470 (MTA No. 2019-0513).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for sixteen categories of information pertaining to a specified incident. You claim some of the requested information is not subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

The authority claims the requested drug and alcohol results for the specified employee are not "public information" subject to the Act. Section 552.002(a) defines "public information" as, in part, "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information; [or]
 - (B) has a right of access to the information[.]”

Gov't Code § 552.002(a)(1), (2)(A)-(B). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a). The authority claims it does not maintain, own, or have access to some of the requested information at issue. The authority explains it contracts with First Transit, Inc. ("First Transit") to provide local and commuter bus service throughout the authority's service region, to include operationally dependable transportation services, maintenance of buses, and maintenance of building and property. The authority further explains the contract between it and First Transit defines First Transit as an independent contractor, and the employees furnished by First Transit to perform services are deemed to be First Transit employees or independent subcontractors. The authority asserts the employee involved in the incident at issue is an employee of First Transit. The authority states access to First Transit employee files, that include disciplinary records or driving records, is not allowed under the contract. Based on these representations, we find the requested information at issue is not maintained in connection with the transaction of official business of the authority. *See* Gov't Code § 552.021. Therefore, we conclude the information at issue is not subject to the Act and need not be released in response to this request.

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." *Id.* § 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). You state the submitted information relates to an ongoing investigation with the authority's police department (the "department"), and release of the information at issue would interfere with the investigation of the case. Based upon this representation, we conclude the release 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). Thus, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the authority may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the department.

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 'NAY', with a long horizontal flourish extending to the right.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/jxd

Ref: ID# 775470

Enc. Submitted documents

c: Requestor
(w/o enclosures)