



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2019

Mr. Lance Kennedy
Counsel for the City of Denison
Messer, Rockefeller & Fort, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2019-19867

Dear Mr. Kennedy:

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# 776345 (COD ORR ID D041719AA).

The City of Denison (the “city”), which you represent, received a request for seven categories of information pertaining to a specified address, including a specified case number.¹ You state the city has released some information to the requestor. 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 of the Government Code provides, in relevant part, the following:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹You state, and provide documentation showing, the city 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).

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(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)(1)-(2), (b)(1)-(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records the release of which would interfere with law enforcement efforts and prosecution in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). 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 or if it relates to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2); 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

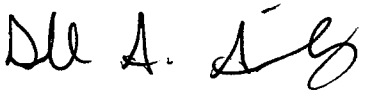
or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to incident), 272.

You state the submitted information pertains to code compliance violations currently under investigation by the city's Code Enforcement Division (the "division") or relates to code compliance charges that did not result in convictions or deferred adjudications. However, you have not demonstrated the division is a law enforcement agency 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 subsections 552.108(a)(1), 552.108(b)(1), 552.108(a)(2), and 552.108(b)(2) of the Government Code are applicable to the submitted information, and the city may not withhold any portion of it on those bases. Accordingly, the city must release the submitted 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 776345

Enc. Submitted documents

c: Requestor
(w/o enclosures)