



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 26, 2019

Mr. Kevin Bailey  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2019-33393

Dear Mr. Bailey:

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# 798520 (Ref. No. M027787).

The City of Midland (the "city") received a request for 1) 9-1-1 calls during a specified time period, and 2) e-mails and text messages sent and received by specified city staff during a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup> You state the city sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we note some of the submitted information is not responsive to the present request because it is not within the time period specified by the requestor. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.<sup>2</sup>

Next, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-32991 (2019). In that ruling, we determined 1) as the sixth and seventh requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released to those requestors; and 2) with the exception of basic information, which must be released to the sixth and seventh requestors, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the city may continue to rely on Open Records Letter No. 2019-32991 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 261.201 of the Family Code, which provides, in pertinent part, as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

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<sup>2</sup> As we are able to make this determination, we need not address your argument against disclosure of this information.

Fam. Code § 261.201(a). You assert the remaining information is subject to chapter 261 of the Family Code. Upon review, however, we find you have failed to demonstrate the information at issue is a report of child abuse or neglect or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 is not applicable to the remaining information, and it may not be withheld on that basis.

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.” Gov’t Code § 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 remaining responsive information relates to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the remaining responsive information 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 remaining responsive information. Accordingly, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, the city may continue to rely on Open Records Letter No. 2019-32991 as a previous determination and withhold the information at issue in accordance with that ruling. the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open

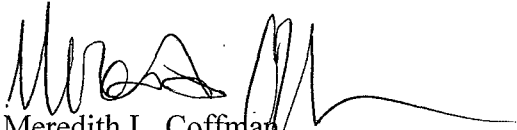
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<sup>3</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/mo

Ref: ID# 798520

Enc. Submitted documents

c: Requestor  
(w/o enclosures)