



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 27, 2020

Mr. Robert Carroll  
Senior Assistant City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2020-06396

Dear Mr. Carroll:

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# 813768 (ORR ID Nos. P001906-120619 and P001915-120819).

The City of Odessa (the "city") received two requests from the same requestor for information pertaining to a specified incident. You claim some of the submitted information is not subject to disclosure under the Act. Additionally, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You state you notified the Texas Department of Public Safety (the "DPS") of the requests and of the opportunity to submit comments to this office as to why the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received and considered comments from the requestor. We have considered the submitted arguments and reviewed the submitted information.

Initially, the city argues some of the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or

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<sup>1</sup> As of the date of this letter, we have not received comments from DPS.

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;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The city contends some of the submitted information is not subject to the Act. Upon review, however, we find the information at issue was collected and is maintained by the city in connection with the transaction of official city business. Thus, the submitted information is subject to the Act, and the city must release it unless it falls within an exception to public disclosure under the Act. See Gov't Code §§ 552.006, .021, .301, .302.

We note the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2019-33534 (2019) and 2019-33909 (2019). As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the city may continue to rely on those rulings as previous determinations and withhold the submitted information in accordance with Open Records Letter Nos. 2019-33534 and 2019-33909.<sup>2</sup> 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). To the extent the submitted information was not previously ruled on, we will address your submitted arguments.

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<sup>2</sup> As our ruling is dispositive, we need not address your arguments against disclosure of this information.

Section 552.108(a)(1) of the Government Code exempts 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 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). The city states the submitted information pertains to a pending criminal investigation. Based on your 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, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, to the extent the submitted information is identical to the information previously submitted and ruled upon by this office, the city may continue to rely on Open Records Letter Nos. 2019-33534 and 2019-33909 as previous determinations and withhold the submitted information in accordance with those rulings. The city may withhold the submitted 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 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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/gw

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

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)