



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2020

Ms. Charla Thomas
Assistant City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2020-10441

Dear Ms. Thomas:

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# 825097.

The City of Temple (the "city") received three requests from different requestors for information pertaining to a specified incident. You state the city will release some information to one of the requestors. You also state the city does not maintain information responsive to a portion of one of the requests.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 52.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 submitted information relates to a pending criminal prosecution, and release of the information would interfere with the investigation and prosecution of the case. Based

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

upon this representation, we conclude the release of the submitted 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 submitted information. Accordingly, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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,

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 825097

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information. Further, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted body worn camera video recording. *See generally* Occ. Code § 1701.661(a), (e).