



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 9, 2020

Ms. Stephanie Berry
Assistant City Attorney
City of Denton
215 East McKinney Street
Denton, Texas 76201-4299

OR2020-10581

Dear Ms. Berry:

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# 821176 (City Ref. Nos. R000060-012120, R000062-012120, R000063-012120, R000076-012220, R000085-012420, R000094-0132720, R000155-021120, and R000175-021720).

The City of Denton (the "city") received eight requests from different requestors for information pertaining to a specified officer-involved shooting. You state the city does not have information responsive to a portion of the requests.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note in a letter dated March 6, 2020, the city states it wishes to withdraw its request for a ruling on the submitted body worn camera recordings because the city has publicly released this information. Therefore, we understand the city to withdraw its requests for open records decisions with regard to the sixth, seventh, and eighth requestors' requests for information, as well as the portions of the remaining requests for information which seek body worn camera recordings. Accordingly, this ruling does not address the public availability of information the city no longer seeks to withhold.

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Next, we note some of the requests at issue are broader than others. Accordingly, any submitted information beyond the scope of the respective requests is not responsive to those requests, and the city need not release information to the requestors that is not responsive to their requests for 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). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You inform us, and provide a statement showing, the Texas Rangers object to disclosure of the information at issue because its release would interfere with an ongoing criminal investigation. Based 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 responsive information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of responsive basic information, which must be released, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers.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.

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

Ref: ID# 821176

Enc. Submitted documents

c: 8 Requestors
(w/o enclosures)