



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2020

Ms. Marie N. Johnson
Counsel for the City of Denison
Messer Fort & McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2020-10682

Dear Ms. Johnson:

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# 821604 (ORR No. D012120GG).

The City of Denison (the "city"), which you represent, received a request for permits and code violations pertaining to a specified address. 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(a)(1) 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 . . . 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 reasonably 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). 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). However, section 552.108 does apply to records created by an agency whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493* (1988), 287(1981).

You state the submitted information relates to an open and pending investigation by the city's Code Compliance Department (the "department"). We understand code enforcement violations are subject to criminal enforcement in the city's municipal court. You further state the release of the submitted information would unduly interfere with the investigation

at issue. Based on your representations and our review, we conclude the city has established release of this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests 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.

Finally, although you ask this office to issue a previous determination permitting the city to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion, we note that in Open Records Letter No. 2020-07747 (2020) this office already issued such a previous determination to the city. *See Gov't Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) 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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/be

Ref: ID# 821604

Enc. Submitted documents

c: Requestor
(w/o enclosures)