



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 19, 2020

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

OR2020-14080

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# 828365 (P002027-122919 & P002913-040720).

The City of Odessa (the "city") received two requests from different requestors for information pertaining to a specified homicide. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. You also state you notified the Ector County District Attorney's Office (the "district attorney's office") and the Texas Department of Public Safety ("DPS") of the request and of the opportunity to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We received comments from the district attorney's office and DPS. We have considered the submitted arguments and reviewed the submitted information.

Initially, section 552.301(e)(1)(D) of the Government Code states a governmental body asking for an attorney general decision must, within fifteen business days of receiving a request, provide the attorney general with "a copy of the specific information requested, *or submit representative samples of information if a voluminous amount of information was requested.*" *Id.* § 552.301(e)(1)(D) (emphasis added). We note you have submitted a voluminous amount of information rather than a representative sample. The information

submitted includes hundreds of files and several hours of audio recordings. We have identified and reviewed a representative sample of the voluminous information submitted.<sup>1</sup>

Next, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-06150 (2020). In that ruling, we determined with the exception of basic information, which must be released, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code on behalf of DPS. We also note the submitted information contains audio recordings that may have been released to the public. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See id.* § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. The city, the district attorney's office, and DPS raise section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See Gov't Code* § 552.007; Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, to the extent the information at issue was previously released, the city may not now withhold that information under section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code protect information made confidential by law, we will address these exceptions for the information that was previously released. Furthermore, to the extent the city did not previously release the information at issue, we will address the submitted arguments against its disclosure.

Further, with regard to the submitted information that was not previously released, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the city may rely on Open Records Letter No. 2020-06150 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>2</sup> *See* Open Records Decision No. 673 (2001).

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 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). 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

---

<sup>1</sup> To the extent the city identifies confidential information subject to a provision not addressed in this ruling, the city should contact the Open Government Hotline.

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

governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and representation from the law enforcement agency that it wishes to have the information withheld.

The district attorney's office and DPS object to the release of the information at issue because it relates to active criminal investigations, and release of the information would interfere with the investigation and prosecution of the case. Based on these representations, we conclude the city may generally withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office and DPS, to the extent the city has not previously released it.<sup>3</sup> *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).

To the extent any of the submitted information was previously released, we will consider your remaining arguments against 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. Section 552.101 encompasses information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982)*. We have further found when a file is

---

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

created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we find the city has not demonstrated any portion of the information at issue consists of medical records for purposes of the MPA, and the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Upon review, we find the city failed to demonstrate the applicability of section 552.130 to the remaining information at issue. Therefore, the city may not withhold the remaining information under section 552.130.

In summary, the city may rely on Open Records Letter No. 2020-06150 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the city previously released any of the submitted information, the city must provide that information to the requestor in accordance with section 552.007 of the Government Code; in that instance, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the city did not previously release the information at issue, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office and DPS.

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,

Katie Stallcup  
Attorney  
Open Records Division

AKS/eb

Ref: ID# 828365

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)