



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2020

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2020-19947

Dear Mr. Falgoust:

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# 837217 (PIR Nos. C067551, C067566, and C067568).

The City of Austin (the "city") received three requests from two requestors for all 9-1-1 calls pertaining to two specified locations during a defined time period and specified reports during a defined time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state the city previously released the submitted audio recording. 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* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law).

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

However, we note the city claims the information is excepted from disclosure pursuant to section 552.101 of the Government Code, which makes information confidential by law for purposes of section 552.007. *See* Gov't Code § 552.134; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will address the city's claim under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 81.046 of the Health and Safety Code, which provides, in part:

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (c-1), (d), and (f).

Health & Safety Code § 81.046(b). In Open Records Decision No. 577 (1990), this office concluded any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception in the statute applies. *See id.* § 81.046(b)-(d), (f); ORD 577. You state the submitted information relates to the investigation of cases or suspected cases of a suspected infectious disease; thus, section 81.046 governs the release of the information at issue. Additionally, you state none of the release provisions of section 81.046 are applicable in this instance. Accordingly, we determine the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)