



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2020

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2020-21931A

Dear Mr. Koury:

Our office issued Open Records Letter No. 2020-21931 (2020) on September 1, 2020. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on September 1, 2020. *See generally* Gov't Code § 552.011 (providing that this office may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 853609.

The City of Bryan (the "city") received a request for a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. You also state the Brazos County District Attorney's Office raises sections 552.103 and 552.108 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

¹ We note you did not comply with section 552.301 of the Government Code in requesting this decision with respect to section 552.103 of the Government Code. *See* Gov't Code § 552.301(e). Nonetheless, the need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.103 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991).

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* The city seeks to withhold the information subject to section 552.022(a)(17) under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the city may not withhold the information subject to section 552.022, which we marked, under section 552.103 or section 552.108 of the Government Code. However, as section 552.1175 of the Government Code makes information confidential for purposes of section 552.022(a)(17), we will consider the applicability of section 552.1175 for the submitted court-filed documents. We will consider the arguments under sections 552.103 and 552.108 for the remaining information not subject to section 552.022(a)(17).

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). The city states the information at issue pertains to an active criminal investigation. Based on this representation, we conclude the release of the information at issue 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 remaining information.

However, we note 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). Basic information refers

to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the names and addresses of arrestees, the arrestee's social security number, a detailed description of the offense, and the location of the offense. See ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001." *Id.* § 552.1175(a)(15). Accordingly, to the extent the individual at issue elects to withhold his information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code. Conversely, if the individual does not elect to restrict access to his information in accordance with section 552.1175(b), then the information we marked may not be withheld under section 552.1175.³

In summary, with the exception of the court-filed documents and basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. To the extent the individual at issue elects to withhold his information in accordance with section 552.1175(b), the city must withhold the information we marked in the remaining information under section 552.1175 of the Government Code. The remaining information must be released.

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

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. See Open Records Decision No. 597 (1991).

³ Regardless of the applicability of section 552.1175 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/gw

Ref: ID# 853609

Enc. Submitted documents

c: Requestor
(w/o enclosures)