



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2020

Mr. Whitt L. Wyatt  
Counsel for the City of Colleyville  
Wood Banowsky, P.L.L.C.  
100 Main Street, 3<sup>rd</sup> Floor  
Colleyville, Texas 76034

OR2020-24627

Dear Mr. Wyatt:

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# 846543 (Ref. No. CH-20-0229).

The City of Colleyville (the "city"), which you represent, received a request for all documents pertaining to a specified address and/or its owners, including a specified topic. You indicate you released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains notices of public meetings and the minutes from those meetings. Notices of a governmental body's public meetings and the minutes from public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes of open meeting are public records and shall be available for public inspection and copying upon request), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the submitted public meeting notices and minutes must be released pursuant to sections 551.022 and 552.041 of the Government Code.

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). Generally, 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). You state the remaining information relates to an ongoing criminal investigation and possible prosecution, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the remaining 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 generally applicable to the remaining information.

We note the remaining information includes notices of code violations. Because copies of the notices of code violations have been provided to the individual who was cited, we find release of this information will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the city may not withhold the notices of code violations under section 552.108(a)(1) of the Government Code. However, with the exception of the notices of code violations, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.103 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through the discovery process. *See* ORD 551 at 4 5. Thus, any information obtained from or provided to all other parties in the anticipated or pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. The submitted notices of code violations were provided to the individual who has been cited; thus, the notices of code violations were inevitably seen by the opposing party to the litigation. Therefore, the city may not withhold the notices of code violations under section 552.103.

In summary, the submitted public meeting notices and minutes must be released pursuant to sections 551.022 and 552.041 of the Government Code. With the exception of the notices of code violations, which must be released, the city may withhold the remaining information under section 552.108(a)(1) 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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/rm

Ref: ID# 846543

Enc. Submitted documents

c: Requestor  
(w/o enclosures)