



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2020

Ms. Roxana I. Perez Stevens  
Counsel for the City of Kyle  
The Knight Law Firm, LLP  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2020-31702

Dear Ms. Perez Stevens:

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# 858938 (Ref. Nos. W007640-092320 and W007641-092320).

The City of Kyle (the "city"), which you represent, received two requests from the same requestor for names of current officers on the Hays County *Brady* list and all correspondence between the city and the Hays County District Attorney's Office (the "district attorney's office") related to the *Brady* list.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. Additionally, you state, and provides documentation showing, you notified the district attorney's office of the request for information and of its right to submit arguments to this office as to why the information at issue 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 have received comments from the district attorney's office. We have considered the submitted arguments and reviewed the submitted information.

Initially, the district attorney's office argues against the release of information that was not submitted by the city. This ruling does not address information that was not submitted by

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<sup>1</sup> We note the city asked for and received clarification regarding the second request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

the city and is limited to the information the city has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Further, the district attorney's office raises no exceptions to disclosure of the information submitted by the city. Thus, the city may not withhold the submitted information based on the district attorney's office's interests.

Next, we note the submitted information contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although you seek to withhold this information under sections 552.108 and 552.111 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 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). As such, sections 552.108 and 552.111 do not make information confidential for the purposes of section 552.022. The Texas Supreme Court has held, however, the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* Tex. R. Civ. P. 2. Thus, because the information at issue relates to criminal cases, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply, and this information may not be withheld on that basis. Additionally, we note common-law privacy is not applicable to information contained in public records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, no portion of the submitted court-filed document may be withheld under section 552.101 in conjunction with common-law privacy. Thus, the city must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your arguments for the information not subject to section 552.022(a)(17) of the Government Code.

You assert the remaining information is excepted under section 552.108 of the Government Code, which provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also* Open Records Decision No. 434 at 2-3 (1986). You state the remaining information consists of internal records and notations containing the mental impressions or legal reasoning of attorneys representing the state. Based upon your representations, we find sections 552.108(a)(4) and 552.108(b)(3) are applicable to the information at issue. Therefore, the city may withhold the remaining information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup>

In summary, the city must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. The city may withhold the remaining information under sections 552.108(a)(4) and 552.108(b)(3) 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

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/be

Ref: ID# 858938

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)