



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 3, 2022

Mr. L. Brian Narvaez  
Counsel for the Town of Prosper  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2022-00086

Dear Mr. Narvaez:

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# 922839 (Town ID# 2021-654).

The Town of Prosper (the "town"), which you represent, received a request for all disciplinary and administrative investigative records involving the requestor's client. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

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). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d

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<sup>1</sup> Although you do not cite to sections 552.136 and 552.137 of the Government Code in your brief to this office, we understand you to raise these sections based on your markings.

519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency’s personnel records); Open Records Decision No. 350 at 3-4 (1982). We note, and you acknowledge, the submitted information consists of an internal administrative investigation of a town employee. However, you inform us the information you have marked relates to a pending criminal investigation or prosecution. 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the town may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Because section 552.136 protects privacy interests, the requestor has a right of access to his client’s otherwise private information. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, because we are unable to determine whether the information at issue belongs to the requestor’s client, we must rule conditionally. To the extent the account number you have marked belongs to the requestor’s client, the town may not withhold such information under section 552.136 from the requestor. To the extent the account number you have marked does not belong to the requestor’s client, the town must withhold this information under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code* § 552.137(a)-(c). We note one of the e-mail addresses at issue may belong to the named individual. We find the remaining e-mail address you have marked is not excluded by subsection (c). Therefore, the town must withhold the remaining e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the town may withhold the information you have marked under section 552.108(a)(1) of the Government Code. To the extent the account number you have marked

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

does not belong to the requestor's client, the town must withhold this information under section 552.136 of the Government Code. The town must withhold the remaining e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The town must release the remaining information to this requestor.<sup>3</sup>

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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/be

Ref: ID# 922839

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the town receives another request for this information from a different requestor, the town must again seek a ruling from this office.