



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Mr. Oleg V. Nudelman
Attorney for the Tarrant Regional Water District
Thompson & Horton LLP
500 North Akard Street, Suite 2150
Dallas, Texas 75201

OR2022-00506

Dear Mr. Nudelman:

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# 923237 (Ref. No. 21.157).

The Tarrant Regional Water District (the "district"), which you represent, received a request for correspondence from the Tarrant County Criminal District Attorney's Office (the "district attorney's office") to the district and the district's board during a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.136, and 552.137 of the Government Code. You also state 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 submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Exhibit E 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. Gov't Code § 552.022(a)(17). Although the district seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663

¹ As of the date of this letter, we have not received any comments from the district attorney's office explaining why any portion of the submitted information should not be released to the requestor.

at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the district may not withhold the court-filed document, which we have marked, under section 552.108. However, as sections 552.101 and 552.136 make information confidential under the Act, we will consider your arguments under these sections to the information subject to section 552.022(a)(17). Further, we will address your arguments against disclosure of the remaining 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). 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 in Exhibit E relates to an ongoing investigation by the district's Law Enforcement Division, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of Exhibit E 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 in Exhibit E. Accordingly, except for the information subject to section 552.022(a)(17) of the Government Code, the district may withhold Exhibit E under section 552.108(a)(1) of the Government Code.²

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You assert the information subject to section 552.022 of the Government Code is protected by common-law privacy. Upon review, however, we find no portion of the information at issue is highly intimate or embarrassing and of no legitimate public concern, and the district may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected,

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136; *see also id.* § 552.136(a) (defining “access device”). Accordingly, we find the district must withhold the information we have marked under section 552.136 of the Government Code.

In summary, except for the information subject to section 552.022(a)(17) of the Government Code, which must be released, the district may withhold Exhibit E under section 552.108(a)(1) of the Government Code. In releasing the information subject to section 552.022(a)(17), the district must withhold the information we have marked under section 552.136 of the Government Code. The district must release the remaining information.

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/mo

Ref: ID# 923237

Enc. Submitted documents

c: Requestor
(w/o enclosures)