



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2022

Mr. Tyrone Lin
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2021-04337

Dear Mr. Lin:

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# 930596 (Ref. Nos. F002220, F002222, F002223, F002225, F002226, F002227, F002228, F002230, F002237, F002238, F002239, F002240, F002241, F002244, F002246, F002247, F002248, F002249, F002251, F002275, F002283, F002296, F002297, F002298, F002300, F002309, F002310, F002319, F002321, F002323, F002343, F002345, F002346, F002347, F002348, F002349, F002350, F002351, F002352, F002353, M000129, M000130, M000131, M000132, M000133, M000134, M000135, M000140, M000141, M000142, M000143, M000144, M000145, M000146, M000148, M000149, M000150, M000151, R044323, and R044951).

The City of Houston and the Houston Fire Department (collectively, the "city") received sixty requests from multiple requestors for information pertaining to a specified incident. The city states it does not maintain information responsive to a portion of one of the requests.¹ The city states it will release some of the requested information and some of the requested information is available on a specified portion of the city's website.² The city claims the submitted information is excepted from disclosure under sections 552.101,

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² A governmental body's officer for public information may comply with the requirement to promptly produce public information "by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body and accessible to the public if the requested information is identifiable and readily available on that website." *See Gov't Code* § 552.221(b-1).

552.103, 552.107, 552.108, 552.111, and 552.152 of the Government Code. Additionally, the city states release of some of the submitted information may implicate the proprietary interests of ASM Global (“ASM”); Aztec Events & Tents; Brungardt Enterprises, LLC; Next FX; Pyrotencico FX, LLC; Re:source Event Group, LLC (“Resource”); Shaffer Sports & Events; and Stageline Mobile Stage, Inc. Accordingly, the city states it notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from ASM and Resource. We have reviewed the submitted arguments and the submitted representative sample of information.³

Initially, we note in a letter dated November 30, 2021, the city states it wishes to withdraw its request for an open records decision with regard to three of the requests for information because the city has no information responsive to these requests. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Bustamante*, 562 S.W.2d at 267-68; ORDs 605 at 2, 563 at 8, 555 at 1-2, 452 at 3, 362 at 2.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any remaining interested third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining interested third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest any remaining interested third party may have in the information.

We note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

³ We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Id. § 552.022(a)(3). The submitted information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by the city that is subject to section 552.022(a)(3). 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)(3) under sections 552.101 and 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the information subject to section 552.022, which we have marked, under section 552.103 of the Government Code. However, because section 552.101 of the Government Code can make information confidential under the Act, we will consider the applicability of this exception to the information subject to section 552.022.

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). We note section 552.108 is generally not applicable to records that are purely administrative in nature and do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (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* Open Records Decision No. 350 at 3-4 (1982). The city states the remaining information 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 does not include the identity of victims. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information nor the applicability of section 1701.661(a) of the Occupations Code to the submitted body worn camera video recording. *See generally* Occ. Code § 1701.661(a), (e). We further 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).

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. The city contends the information subject to section 552.022 of the Government Code is confidential under section 552.101 in conjunction with section 418.178 of the Government Code. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). Section 418.178 provides:

(a) In this section, “explosive weapon” has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Id. § 418.178. The fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of that provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The city argues the information at issue is confidential under section 418.178. However, upon review, we find the city has failed to demonstrate the applicability of section 418.178 to the information at issue. Therefore, the city may not withhold any portion of the information subject to section 552.022 under section 552.101 of the Government Code in conjunction with section 418.178 of the Government Code.

Section 552.136 of the Government Code provides, “Notwithstanding 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.”⁵ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the routing and bank account numbers within the remaining information under section 552.136 of the Government Code.

In summary, the city must release the information we have marked pursuant to section 552.022 of the Government Code. 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. In releasing the information subject to section 552.022 of the Government Code, the city must withhold the routing and bank account numbers under section 552.136 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/mo

Ref: ID# 930596

Enc. Submitted documents

c: Requestors
(w/o enclosures)

9 Third Parties
(w/o enclosures)

⁵ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).