



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Ms. Katie Leininger  
Assistant City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581

OR2022-07345

Dear Ms. Leininger:

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# 935538 (ORRs P002812-120921, P002842-121521, P002845-121621, P002846-121621, and P002847-121621).

The City of Pearland (the "city") received five requests from the same requestor for the city's contracts for traffic control signal installation, contact information for a named individual, information describing the software used for the traffic control signal at a specified intersection, all communication between the city and the Texas Department of Transportation during a defined time period, and the resume of a named individual. 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 representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request because it was created after the date the request was received. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

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<sup>1</sup> 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.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) 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[.]

Gov' Code § 552.022(a)(3). The responsive information contains a contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The information subject to section 552.022(a)(3) must be released unless it is confidential under the Act or other law. *Id.* § 552.022(a)(3). Although you raise sections 552.103 and 552.108 of the Government Code for this information, these sections are discretionary exceptions to disclosure and do 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), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the city may not withhold Exhibit F under section 552.103 or section 552.108 of the Government Code and it must be released pursuant to section 552.022(a)(3) of the Government Code. However, we will consider your arguments for the information not subject to section 552.022 of the Government Code.

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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and representation from the law enforcement agency that it wishes to have the information withheld. You state, and provide documentation showing, the Brazoria County Criminal District Attorney's Office (the “district attorney's office”) objects to the release of the remaining information because it relates to a pending criminal investigation and prosecution, and release of the information would interfere with the investigation and prosecution of the case. Based upon 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. Accordingly, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>2</sup>

In summary, the city must release Exhibit F pursuant to section 552.022(a)(3) of the Government Code. The city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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,

Pearlie Gault  
Attorney  
Open Records Division

PG/jm

Ref: ID# 935538

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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