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ATTORNEY GENERAL OF TEXAS

May 20, 2022

Ms. Tessa K. Meredith
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Messer Fort McDonald PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2022-14588

Dear Ms. Meredith:

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# 946745 (ORR# B030322CW).

The City of Balch Springs (the "city"), which you represent, received a request for a specified incident report. The city claims either it is not required to comply with the request pursuant to section 552.028 of the Government Code or the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.028(a) of the Government Code provides the following:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

¹ 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.

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

Gov't Code § 552.028(a), (c). Upon review, we find the city has not established the requestor is requesting information on behalf of the incarcerated individual at issue. Thus, we find the city has failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Accordingly, we conclude section 552.028 of the Government Code does not permit the city to decline to comply with this request.

Next, we note pages 20-24, 28-32, 35-38, and 42 of the submitted documents contain court-filed documents that are subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(17). Section 552.108 is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022(a)(17) under section 552.108. Accordingly, the city must release this 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). The city states the remaining information relates to a pending criminal prosecution. Based on this representation, we conclude the release of this information 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).

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 the *Houston Chronicle* decision. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release pages 20-24, 28-32, 35-38, and 42 of the submitted documents. With the exception of basic information, which the city must also release, the city may withhold the remaining information under section 552.108(a)(1) 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 946745

c: Requestor