



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2022

Ms. June B. Harden
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2022-29624

Dear Ms. Harden:

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# 976047 (PIR Nos. R012917 and R012943).

The Office of the Attorney General (the "OAG") received two requests from different requestors for certain letters and correspondence.¹ The OAG states it released some information with redactions allowed by law. Although the OAG takes no position regarding whether the submitted information is excepted from disclosure, the OAG states it notified the City of Uvalde (the "city") of the requests for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the city.² We have

¹ The OAG states it sent each requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestors accepted the cost estimates. *See Gov't Code* § 552.2615. The estimates of charges required the requestors to provide deposits for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The OAG informs us it received the required payments by both requestors on July 11, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² Although the city raises section 552.3035 of the Government Code, we note section 552.3035 is not an exception to disclosure by a governmental body under the Act. Rather, section 552.3035 governs the responsibility of this office to safeguard any information submitted to it in connection with a request for a ruling under section 552.301(e)(1)(D). *See Gov't Code* § 552.3035 (providing that the attorney general "may not disclose to the requestor or the public any information submitted" to the office in a ruling request). Therefore, we do not address the city's argument under section 552.3035 of the Government Code.

considered the submitted arguments and reviewed the submitted representative sample of information.³

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Id. § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *See also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 414 at 4-5 (1987)*. Where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The city states, and provides documentation demonstrating, the Texas Department of Public Safety (“DPS”) objects to release of the information at issue because it relates to its ongoing criminal investigation. Based upon DPS’s representation and our review, we conclude the release of some 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). Accordingly, we conclude section 552.108(a)(1) is applicable to the information at issue, and the OAG may withhold the information we marked under section 552.108(a)(1) of the Government Code on behalf of DPS.⁴ However, we find the city has not

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 that those records contain substantially different types of information than that submitted to this office.

⁴ As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure of this information.

demonstrated how release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the OAG may not withhold any of the remaining information under section 552.108(a)(1) or section 552.108(b)(1) of the Government Code.

The city raises section 552.101 of the Government Code in conjunction with common-law privacy for the remaining information. Section 552.101 of the Government Code excepts from public disclosure “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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). Upon review, we find the city has failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the OAG may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

The city seeks to withhold some of the remaining information under section 552.1175 of the Government Code. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. We note, for purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). Upon review, we find the city has failed to demonstrate any of the remaining information is subject to section 552.1175 of the Government Code, and the OAG may not withhold any of the remaining information on that basis.

The city seeks to withhold the remaining information under section 552.152 of the Government Code. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. The city argues the release of the remaining information would subject city officers and employees to a substantial threat of physical harm. Upon review, however, we find the city has failed to demonstrate release of any of the remaining information would subject a city employee or officer to a substantial risk of physical harm. Therefore, the

OAG may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the OAG may withhold the information we marked under section 552.108(a)(1) of the Government Code on behalf of DPS. The OAG 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 976047

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)