



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
315 South Santa Rosa, 6th Floor
San Antonio, Texas 78207

OR2022-36881

Dear Mr. Kopp:

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# 983523 (COSA File No. W471782).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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). The city states the submitted information pertains to an active criminal investigation or prosecution. 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 submitted 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). Accordingly, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In this instance, the city seeks to withhold the entirety of the basic information under section 552.101 in conjunction with common-law privacy. However, the city has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the basic information under section 552.101 of the Government Code on that basis. Upon review, however, we conclude portions of the basic information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the basic information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining basic information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any of the remaining basic information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.152 of the Government Code 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.

Gov't Code § 552.152. The city informs us some of the basic information relates to an undercover peace officer. The city asserts release of this information would subject the officer to a substantial threat of physical harm. Based upon these representations and our review, we conclude the city has demonstrated release of the information at issue would subject the officer to a substantial threat of physical harm. Therefore, the city must withhold the undercover officer's identity in the basic information under section 552.152 of the Government Code.

In summary, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the city must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the undercover officer's identity under section 552.152 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 983523

Enc. Submitted documents

c: Requestor
(w/o enclosures)