



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2022

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2022-37202

Dear Ms. Thomas:

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# 987514 (Request Nos. 22-2778 and 22-2988).

The Temple Police Department (the “department”) received two requests from different requestors for all information pertaining to a specified incident. You claim some of the submitted information was not properly requested by the second requestor pursuant to section 1701.661(a) of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments 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 department states Exhibit B pertains to a pending criminal investigation. 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 Exhibit B. Therefore, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code.¹

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 section 773.091 of the Health and Safety Code, which provides, in part, as follows:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services [(“EMS”)] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is [EMS].

Health & Safety Code § 773.091(b), (g). Upon review, we find you have failed to demonstrate Exhibit D constitutes EMS records for the purposes of section 773.091. Therefore, the department may not withhold any portion of Exhibit D under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

In summary, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The department must release the remaining information to both requestors.

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

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information or the applicability of section 1701.661(a) of the Occupations Code to the submitted video recording. *See generally* Occ. Code § 1701.661(a), (e).

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/pt

Ref: ID# 987514

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)