



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2014

Ms. Debbie Thomas
City Secretary
City of Alvarado
104 West College
Alvarado, Texas 76009

OR2014-10600

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# 527286.

The City of Alvarado (the "city") received four requests from one requestor for the digital, video, or audio recordings of traffic stops for a named police officer over a specified period of time; all reports from officers working with the named officer within a specified time period; the number of the named officer's arrests, warnings, and citations over a specified time period; the city's police department's policy on complaints made regarding a police officer and on officers writing on individuals' personal property during traffic stops; the city's police department's employee roster for 2014; the city secretary and the city court clerk's personnel files; a list of city officials currently in office; and a list of the individuals currently on the ballot for the upcoming election. You state you have no information responsive to the request for the number of arrests by the named officer over a specified period or one of the requested policies.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.²

Initially, we note you have not submitted any information responsive to the request for the personnel files of the city secretary and city court clerk. Thus, to the extent any further information responsive to this request existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts "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. Upon review, we find the city has failed to demonstrate how any of the information contained in Exhibit 5 is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold Exhibit 5 under section 552.101 of the Government Code in conjunction with common-law privacy.

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 must reasonably 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). You raise section 552.108(a)(1) for the information in Exhibits 1 through 4. You have provided a statement from the Alvarado Chief of Police stating that cases 14-00256, 14-00232, 14-00262, and 14-00263 are pending prosecution with either the Johnson County Attorney's Office and/or the Johnson County District Attorney's Office. Based on the submitted representations and our review, we conclude the release of cases 14-00256, 14-00232,

²We assume that 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.

14-00262, and 14-00263 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). Based on these representations, we conclude section 552.108(a)(1) of the Government Code is applicable to cases 14-00256, 14-00232, 14-00262, and 14-00263 .

However, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to Exhibits 3 and 4. Additionally, you have not explained how the remaining arrest report and case 14-00260 in Exhibits 1 and 2 relate to any pending criminal investigation nor have you submitted representation from any other governmental body explaining how release will interfere with that agency's law enforcement or prosecutorial interests. Accordingly, the remaining information may not be withheld under section 552.108(a)(1) of the Government Code.

Additionally, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold cases 14-00256, 14-00232, 14-00262, and 14-00263 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the audio and video portions of the submitted video recordings contain information subject to section 552.130. The audio portions of the recordings are intertwined with the video portions of the recordings. You state the city does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, based on the representative sample of the requested video and audio recordings, the city must withhold the requested recordings in their entireties under section 552.130. The city must also withhold the information we have marked in Exhibits 1 and 2 under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the city may withhold cases 14-00256, 14-00232, 14-00262, and 14-00263 under section 552.108(a)(1) of the Government Code. The city must withhold the requested video recordings and the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 527286

Enc. Submitted documents

c: Requestor
(w/o enclosures)