



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2014

Mr. Byron L. Brown
Counsel for the City of Kenefick
Randle Law Office LTD., L.L.P.
820 Gessner, Suite 1570
Houston, Texas 77024-4494

OR2014-21394

Dear Mr. Brown:

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# 544036.

The City of Kenefick (the "city"), which you represent, received a request for information pertaining to a named individual, including (1) employment information, (2) background check results, (3) oath of office, (4) city meeting minutes during the previous two years referencing the named individual, (5) photographs and videos, (6) cases the named individual presided over, and (7) when the named individual "will be holding court" during the next two months. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it was created after the city received the request for information. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

Next, we note the city did not submit information pertaining to employment information, background check results, or photographs and videos of the named individual. To the extent this information existed on the date the city received the request, we assume the city has released it. If the city has not released this information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note portions of the submitted information constitute records of the judiciary. The Act generally requires the public disclosure of information maintained by a “governmental body.” *See* Gov’t Code § 552.002(a)(1). While the Act’s definition of a “governmental body” is broad, it specifically excludes the judiciary. *See id.* § 552.003(1)(B). Information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). The submitted information contains emails and attachments of the municipal court judge pertaining to his judicial function. Accordingly, we conclude this information consists of records of the judiciary that are not subject to the Act, and the city is not required to release it in response to the request.

Next, we note the submitted information contains notices, agendas, and minutes of public meetings of the city council. The notices, agendas, and minutes of a governmental body’s public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov’t Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body’s chief administrative officer or officer’s designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). Although you seek to withhold this information under section 552.108, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the city must release the notices, agendas, and minutes, which we have marked, pursuant to chapter 551 of the Government Code.

Next, we note portions of the remaining information are subject to section 552.022 of the Government Code, which provides in pertinent part:

- (a) 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:

...

(3) information in an account, voucher, or contract, relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The information we have marked consists of information in an account relating to the expenditure of public funds. We find this information is subject to section 552.022(a)(3). Although you seek to withhold this information under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the information we marked may not be withheld under section 552.108. However, because section 552.136 of the Government Code makes information confidential under the Act, we will address its applicability to the information at issue.¹ We will also address your argument under section 552.108 of the Government Code for the remaining responsive information not subject to section 552.022.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the city must withhold the routing and bank account numbers we have marked in the documents subject to section 552.022(a)(3) under section 552.136 of the Government Code.

We now address your argument under section 552.108 of the Government Code for the remaining responsive information not subject to section 552.022. 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[.]” *Id.* § 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). 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. 474 at 4-5 (1987). Where a non-law enforcement agency 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. You state the requested information pertains to an ongoing criminal investigation. Further, you state the Liberty County Sheriff's Office

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(the "sheriff's office") objects to disclosure of the remaining information because its release would interfere with the detection, investigation, or prosecution of crime. Based on these representations, we conclude the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the sheriff's office. *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).

In summary, the emails and attachments of the municipal court judge pertaining to his judicial function are not subject to the Act, and the city need not release this information. The city must release the notices, agendas, and minutes, which we have marked, pursuant to chapter 551 of the Government Code. The city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. With the exception of the information subject to section 552.022(a)(3), the city may withhold the remaining submitted responsive information under section 552.108(a)(1) of the Government Code on behalf of the sheriff's office.

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,


Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 544036

Enc. Submitted documents

c: Requestor
(w/o enclosures)