



February 12, 2015

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P.O. Box 1458
Kingsville, Texas 78364

OR2015-02848

Dear Ms. Alvarez:

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# 553480 (City ID# 2014-671, 2014-709, 2014-728, 2014-729).

The City of Kingsville (the "city") received four requests for information regarding a specified police report. The fourth requestor also seeks any information regarding a named individual. You claim the submitted information is excepted from disclosure under sections 552.108, 552.1175, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

¹Although you raise section 552.117 of the Government Code for the information of the peace officer at issue, we note section 552.1175 is the proper exception to raise for information held in a non-employment context.

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document that is subject to subsection 552.022(a)(17), which must be released unless it is made confidential under the Act or other law. *See id.* You raise section 552.108 of the Government Code for this information. However, this is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold this information, which we have marked, under this exception. However, section 552.1175 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of this exception to the information subject to section 552.022(a)(17). In addition, we will consider your arguments for the remaining 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.” 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 state all of the submitted information relates to a pending criminal prosecution. Based upon this representation, we conclude release of the submitted information 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) of the Government Code is applicable to the remaining submitted information.

However, we note, and you acknowledge, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes an arrestee's address and social security number, but does not include motor vehicle record information subject to section 552.130 of the Government Code. *See* ORD 127. Accordingly, with the exception of basic information, we find the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

²As our ruling is dispositive for this information, we do not address your other arguments against its disclosure.

We note the court-filed document and the basic information include information that may be subject to 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. However, we note section 552.1175 is not applicable to an individual's girlfriend. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the information pertains to a peace officer and is held by the city in a non-employment capacity. Thus, to the extent the officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175. If the peace officer at issue does not elect to restrict access to the information in accordance with section 552.1175(b), the city may not withhold this information under section 552.1175. However, we note section 552.1175 protects personal privacy, and one of the requestors is the officer whose information is at issue. Thus, he has a right of access to his information pursuant to section 552.023 of the Government Code, and the city may not withhold the redacted information pertaining to him under section 552.1175 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In summary, except for basic information and the court-filed document we have marked, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the court-filed document and basic information, the city must withhold the information we have marked under section 552.1175 of the Government Code from the first and second requestors if the officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b).³

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.

³Regardless of the applicability of section 552.1175, we note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). As noted above, the requestor has a special right to his own social security number. *See id.* § 552.023(b).

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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 553480

Enc. Submitted documents

c: Requestors
(w/o enclosures)