



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2015-04298

Dear Mr. Gates:

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# 560894 (City ID# 15946).

The City of Midland (the "city") received a request for information pertaining to a specified incident. You state the city released some information, including a DIC-24 statutory warning, a DIC-25 notice of suspension, and basic information to the requestor. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime cannot be withheld under section 552.108). You claim the remaining 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 subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). The court-filed documents we have marked are subject to section 552.022(a)(17) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure 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) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the court-filed documents under

section 552.108 of the Government Code. As you raise no other exception to disclosure of this information, the court-filed documents must be released.

Section 552.108 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). Generally, 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the remaining information relates to a pending criminal investigation and prosecution. Based on this representation, we conclude the release of this 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, the city may withhold the remaining information at issue under section 552.108(a)(1).

In summary, the city must release the submitted court-filed documents, which we have marked, pursuant to section 552.022(a)(17) of the Government Code. The city may withhold the remaining information at issue under section 552.108(a)(1) 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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 560894

Enc. Submitted documents

c: Requestor
(w/o enclosures)