



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2015

Mr. Tracie Reilly
Assistant City Attorney
Public Safety Legal Advisor
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79109-1971

OR2015-04983

Dear Mr. Reilly:

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# 556471 (City Request No. 14-2273).

The City of Amarillo (the "city") received a request for information pertaining to two specified incidents and any information pertaining to a named inmate's behavior while he was at the Clements Unit.¹ Although the city takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the interests of the Texas Department of Criminal Justice (the "department").² Accordingly, the city notified the department of its right to submit comments to this office as to why its information should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted information.

¹We note the city received clarification of the information requested.

²We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because third-party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on third-party interests. *See id.* §§ 552.007, .302, .352.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is expressly made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although the department raises sections 552.103 and 552.108 of the Government Code for this information, these exceptions are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the information subject to section 552.022, which we have marked, under section 552.103 or section 552.108. However, the department also raises section 552.134 of the Government Code for this information, which makes information confidential for purposes of section 552.022. Accordingly, we will address the applicability of this exception to the information subject to section 552.022. Further, we will consider the department’s arguments against disclosure of the remaining information.

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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the information not subject to section 552.022 of the Government Code relates to an open criminal case that is currently on appeal. Based on the department’s representation and our review, 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 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 the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code on behalf of the department.³

³As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure of this information. We note basic information under section 552.029(8) of the Government Code corresponds to the basic information that may not be withheld under section 552.108 of the Government Code. *See* Gov’t Code § 552.029(8) (basic information regarding alleged crime involving inmate is subject to required

Section 552.134 of the Government Code relates to inmates of the department and provides in relevant part as follows:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a), (b)(2). In this instance, we note the remaining information relates to an inmate sentenced to death. We note section 552.134 is not applicable to information about such an inmate. Accordingly, the city may not withhold the remaining information under section 552.134. *See id.* § 552.134(b)(2).

The department also raises sections 552.102 and 552.117 of the Government Code for the remaining information. Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). However, sections 552.102 and 552.117 are applicable only to information the city holds in an employment context. Upon review, we find the city does not maintain the information at issue in an employment context. Therefore, the city may not withhold any of the remaining information under section 552.102 or 552.117.

Section 552.1175 of the Government Code 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. *Id.* § 552.1175. Upon review, we find the department has failed to demonstrate

disclosure). We also note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. *See Open Records Decision No. 597 (1991).*

any of the remaining information is subject to section 552.1175 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

In summary, the city must release the information we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the city may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code on behalf of the department.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 556471

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
4616 West Howard Lane, Suite 250
Austin, Texas 78728
(w/o enclosures)