



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2015

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-07778

Dear Ms. Mares:

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# 561052 (McKinney reference numbers 10-13393, 10-13274).

The City of McKinney (the "city"), which you represent, received two requests from the same requestor for three categories of information pertaining to a specified company: (1) all building and construction permits and inspections from a specified time period, (2) all files containing complaints, code violations, or noise complaints of any kind from a specified time period, and (3) aerial photographs from a specified time period. 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.

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(a)(1) 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). This section is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See Open Records Decision No. 199 (1978)*. However, section 552.108 does apply to records created by an agency whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 (1988), 287 (1981)*.

You state the submitted information relates to an open and pending criminal investigation by the city's Code Compliance Department (the "department"). You also state the department is a law enforcement agency because the department is charged with enforcing civil and criminal laws related to zoning, nuisances, and public health, and the department investigates alleged violations of the City Code and files criminal complaints with the city's municipal court for alleged zoning and nuisance violations. You further state the release of the submitted information would interfere with the department's pending criminal investigation. Based on your representations and our review, we find the department is a law enforcement agency for purposes of section 552.108 of the Government Code, and we conclude section 552.108(a)(1) is applicable to the submitted information in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, an identification and description of the complainant and a detailed description of the offense. ORD 127. Thus, with the exception of basic information, which must be released, the city may withhold the submitted information 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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 561052

Enc. Submitted documents

c: Requestor
(w/o enclosures)