



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Ms. Amy L. Sims
Deputy City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2015-09069

Dear Ms. Sims:

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# 563098 (File No. 1101).

The City of Lubbock (the "city") received a request for all records relating to a named individual, including all documentary evidence, and all other evidence, relating to a specified case from a representative of the Texas Military Forces ("TXMF"). The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception the city claims and reviewed the submitted information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹Although the city raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the city has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note the city has only submitted audio and video recordings and an image. We assume, to the extent any additional information responsive to the request existed on the date the city received the request, the city has released it. If the city has not released any such information, it must do so at this time. *See id.* §§ 552.006, .301, .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).

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). The city states the submitted information relates to a pending criminal investigation. Upon 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, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

The requestor seeks the submitted information pursuant to the intergovernmental transfer doctrine. The city has the discretion to release the information pursuant to an intergovernmental transfer. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. Thus, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release the submitted information that is subject to section 552.108 to the requestor. However, should the city choose not to exercise its discretion under the

³We note, because the submitted information does not contain criminal history record information (“CHRI”) of the individual named in the request for information, we do not address the requestor’s asserted right of access to CHRI under sections 411.087, 411.089, and 411.121 of the Government Code. *See* Gov’t Code §§ 411.087(a)(2) (agency entitled to obtain CHRI from the Texas Department of Public Safety (“DPS”) also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency]”), .089(a) (providing DPS shall grant criminal justice agencies access to CHRI), .121(b)(1) (providing DPS shall grant adjunct general of the TXMF access to CHRI of a member of the TXMF). Additionally, although the requestor asserts an implied right of access under chapter 432 of the Government Code, the requestor has not cited to any specific provision under chapter 432, nor are we aware of any such law, that provides him with a right of access to the submitted information. *See* Gov’t Code ch. 432.

interagency transfer doctrine, then the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the city does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine. We note, however, some of the submitted information is subject to section 552.130 of the Government Code, which has an access provision governing release of information.⁴ Where information is confidential by statute, the statute specifically enumerates the entities to which the information may be released, and the governmental body is not among those entities, the information may not be transferred to the governmental body. Consequently, because information subject to this exception must be withheld if the city chooses to release the submitted information pursuant to the intergovernmental transfer doctrine, we must consider the applicability of this section to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the city must withhold the discernable license plate numbers in the submitted video recordings under section 552.130 of the Government Code.

In summary, with the exception of the discernable license plate numbers in the submitted video recordings that must be withheld under section 552.130 of the Government Code, the city has the discretion to release the submitted information to the TXMF under the intergovernmental transfer doctrine. Should the city choose not to exercise its discretion under the intergovernmental transfer doctrine, then, 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

⁴The 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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Wheelus', with a long horizontal flourish extending to the right.

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 563098

Enc. Submitted documents

c: Requestor
(w/o enclosures)