



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2015-16065

Dear Ms. Quinn:

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# 579921 (Cedar Park Ref. No. 15-978).

The Cedar Park Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor, including a recording of radio transmissions during the incident and the name, sex, ethnicity, salary, title, and dates of employment of a named department officer. You state the department will release some information. You also state the department maintains no information responsive to the request for a recording of radio transmissions.¹ You claim the remaining requested 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.

We some of the submitted information in Exhibit C is subject to section 552.022 of the Government Code. Section 552.022(a)(2) provides the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body are expressly

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. Gov't Code § 552.022(a)(2). Although you assert the officer's name, sex, ethnicity, salary, title, and hire date, which you have marked, are excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; 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 department may not withhold the information subject to section 552.022(a)(2) under section 552.108. As the department raises no other exception to disclosure of this information, the department must release the information you have marked in Exhibit C pursuant to section 552.022(a)(2) of the Government Code.

We next address your claim under section 552.108 of the Government Code for the remaining responsive information in Exhibit C. 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue relates to a pending criminal prosecution. Based upon your representation, we find the department has demonstrated release of the information at issue will 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 the department may withhold the remaining responsive information in Exhibit C under section 552.108(a)(1) of the Government Code.

In summary, the department must release the officer's name, sex, ethnicity, salary, title, and hire date in Exhibit C, which you have marked, pursuant to section 552.022(a)(2) of the Government Code. The department may withhold the remaining responsive information in Exhibit C 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/>

[url_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# 579921

Enc. Submitted documents

c: Requestor
(w/o enclosures)