



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 13, 2015

Mr. Ryan D. Pittman  
Abernathy Roeder Boyd & Hullett, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2015-16745

Dear Mr. Pittman:

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# 580901.

The City of Frisco (the "city"), which you represent, received eleven requests for information pertaining to a specified arrest. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

*Id.* § 552.022(a)(17). The city must release the information subject to section 552.022(a)(17) unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold the court-filed documents 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 city may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. We note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, you may not withhold the information subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, you must release the marked court-filed documents. However, we will address your arguments for the remaining 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).

You state the submitted information relates to an open criminal investigation. Based on this representation and our review, we find the city has demonstrated release of the remaining 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).

However, as 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy; both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered

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<sup>1</sup>As our ruling is dispositive for this information, we do not address your other arguments to withhold this information. *See* Open Records Decision No. 597 at 2-3 (1991).

intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation, Id.* at 683.

Upon review, we find the city has failed to demonstrate the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must release the court-filed documents pursuant to section 552.022(a)(17). With the exception of basic information, which must be released, the city may withhold the remaining 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](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# 580901

Enc. Submitted documents

c: 9 Requestors  
(w/o enclosures)