



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Ms. A. Feliz Abalos
Police Legal Advisor
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2015-19374

Dear Ms. Abalos:

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# 579553 (ORR# 15-663).

The City of Odessa (the "city") received a request for a copy of 911 recordings related to a specified incident, information related to a specified incident, and records for police responding to a named business, during a specified period of time. You state you have released some information to the requestor. 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 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. Gov't Code § 552.022(a)(17). We understand the city seeks to withhold the court-filed documents under section 552.107(2) of the Government Code.¹ Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). We understand you to assert the release of the search warrants and paperwork

¹Although you raise section 552.101 in conjunction with your assertion the information at issue is filed under judicial seal, we note the proper exception to raise in this instance is section 552.107(2). *See* Gov't Code § 552.107(2). Accordingly, we will consider your argument under that section.

for such search warrants would be in direct violation of a court's order. You have submitted orders issued by the magistrate judge in Ector County, Texas, prohibiting the disclosure of search warrants by a named business for a specified period of time. We note the order does not prohibit the release of any information by the city. Further, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *Id.* § 552.022(b); *see also Ford v. City of Huntsville*, 242 F. 3d 235, 241-42 (5th Cir. 2001). Because the order does not prohibit the release of any information by the city, and because section 552.022(b) prohibits a court from ordering the city to withhold documents subject to section 552.022, we conclude the city may not withhold the information at issue under section 552.107(2). The city must release the court-filed documents, which we have marked, under section 552.022(a)(17) of the Government Code.

The city also seeks to withhold information subject to articles 18.20 and 18.21 of the Code of Criminal Procedure. As previously noted, Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). Article 18.20 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the interception of wire, oral, or electronic communications; the installation or use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment; or the disclosure of a stored communication, information subject to an administrative subpoena, or information subject to access under article 18.21 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 18.20, §§ 6, 9; *see also id.* § 1 (defining terms). Section 11 of article 18.20 states "[t]he judge shall seal each application made and order granted under this article." *Id.* § 11. Article 18.21 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment. *See* Crim. Proc. Code art. 18.21, § 2; *see also id.* § 1 (defining terms). Article 18.21 also permits a court to issue an order authorizing the disclosure of contents, records, or other information of a wire or electronic communication. *See id.* § 5. Section 2 of article 18.21 states the court "shall seal an application and order granted under this article." *Id.* § 2(g). You indicate, and the order and application likewise reflect, that the information at issue was filed under seal. As the documents at issue have been sealed by a court pursuant to articles 18.20 and 18.21, the city must withhold this information under seal, which we have marked, under section 552.107(2) of the Government Code.

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, and have submitted an affidavit from the city's police department stating, the submitted information relates to an ongoing criminal investigation. Based on this representation, we conclude the 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 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 remaining information.

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 remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the court-filed documents, which we have marked, under section 552.022(a)(17) of the Government Code. The city must withhold the information we have marked under section 552.107(2) of the Government Code. With the exception of basic information, 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, 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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 579553

Enc. Submitted documents

c: Requestor
(w/o enclosures)