



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2015

Mr. David T. Ritter
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-22049

Dear Mr. Ritter:

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# 583771.

The City of McKinney (the "city"), which you represent, received a request for information pertaining to a specified house fire. You state you have released some information to the requestor. You also state you will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.¹ 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.

You state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-14286 (2015). In that ruling, we determined with the exception of basic information, which must be released, the city may withhold the information at issue under section 552.108(a)(1) of the

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

Government Code. We note basic information includes, among other things, the identification and description of the complainant. *See* Gov't Code § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Accordingly, we presume the complainant's identification and description were released in accordance with Open Records Letter No. 2015-14286. The city now seeks to withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person; thus, the informer's privilege, unlike other claims under section 552.101, neither prohibits release nor makes information confidential and may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city may not now withhold such information under section 552.101 in conjunction with the common-law informer's privilege. As we have no indication the law, facts, and circumstances on which Open Records Letter No. 2015-14286 was based have changed, the city may continue to rely on that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, we will consider the city's remaining arguments for the submitted information that is not subject to Open Records Letter No. 2015-14286.

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 information at issue relates to a pending criminal investigation. Based on your representation and our review, we find the city has demonstrated the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co.*, 531 S.W.2d at 177. Thus, the city may withhold the information at issue under section 552.108(a)(1) of the Government Code.²

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city may continue to rely on Open Records Letter No. 2015-14286 as a previous determination and withhold or release the identical information in accordance with that ruling. 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 583771

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.