



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Mr. Steven M. Peña, Sr.  
For the City of Cuero  
Davidson Troilo Ream & Garza  
7550 West Interstate 10, Suite 800  
San Antonio, Texas 78229-5815

OR2015-24184

Dear Mr. Peña:

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# 587690.

The City of Cuero (the "city"), which you represent, received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.1175 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-18161 (2014). In that ruling, we determined, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code because it related to a criminal prosecution that was pending at that time. However, we understand the case at issue is now closed. Thus, we find circumstances have changed, and the city may not rely on Open Records Letter No. 2014-18161 as a previous determination. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address the submitted arguments against disclosure of the submitted 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). We note section 552.108 is generally not applicable to the records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

In this instance, the submitted information pertains to an internal investigation involving the city’s police department conducted by the city manager. You explain the submitted information relates to a completed criminal prosecution and argue it is subject to section 552.108(a)(1) of the Government Code. *See* Gov’t Code § 552.108(a)(1). However, because the information pertains to a closed case, we find the city has failed to demonstrate the applicability of section 552.108(a)(1) of the Government Code to the submitted information, and the city may not withhold the submitted information on that basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.<sup>1</sup> Gov’t Code § 552.117(a)(2). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.<sup>2</sup> However, none of the remaining information constitutes the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer. Therefore, you may not withhold any of the remaining information under section 552.117(a)(2).

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<sup>1</sup>Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Upon review, we find none of the remaining information is subject to section 552.1175 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 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 intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, portions of the information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the information at issue pertains to an individual who has been de-identified under section 552.117 of the Government Code. Therefore, the city may not withhold the information pertaining to the de-identified individual under section 552.101 in conjunction with common-law privacy. Further, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

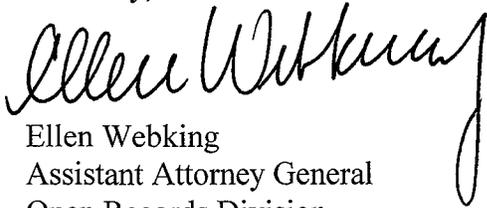
In summary, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The city must release the remaining information.

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,

A handwritten signature in black ink that reads "Ellen Webking". The signature is written in a cursive style with a long, vertical tail on the letter "g".

Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 587690

Enc. Submitted documents

c: Requestor  
(w/o enclosures)