



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Mr. Robert G. Schleifer, Jr.
Counsel for the City of Kilgore
Law Office of Robert G. Schleifer, Jr.
116 North Kilgore Street
Kilgore, Texas 75662

OR2015-27025

Dear Mr. Schleifer:

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# 592191.

The City of Kilgore (the "city"), which you represent, received a request for the personnel files of named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not pertain to the named individuals. This ruling does not address the public availability of the non-responsive information, which we have indicated, and that information need not be released.

Next, you assert the responsive information is a repetitious or redundant request because it has been previously furnished to the 4th Judicial District Court (the "court") for an in-camera review pursuant to a court order. You assert, under section 552.232, the city need not release the same information in response to the instant request because you contend the city

¹Although you do not raise sections 552.101, 552.108, 552.117, 552.130, 552.137, and 552.147 of the Government Code in your brief, we understand you to assert these exceptions based on your arguments.

“previously furnished copies to the [r]equestor via [the court]. Section 552.232 outlines the procedures a governmental body must follow in responding to a repetitious or redundant request from the same requestor. See Gov’t Code § 552.232(a), (d). However, section 552.232 applies only to cases in which a requestor has made a previous request for information under the Act. In this instance, you inform us the responsive information was previously provided to the court in response to a court order and not in response to a request made by this requestor under the Act. Thus, we conclude that section 552.232 does not apply to the information that was previously released. Accordingly, we will address your arguments against disclosure of the responsive 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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. See *id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the responsive information consists of personnel file records pertaining to employees of the city. Section 552.108 is generally not applicable to purely administrative records that do 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, 525-26 (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). However, you inform us the responsive information pertains to a specific criminal prosecution involving a named defendant and the release of the information at issue would interfere with the investigation or prosecution of crime because the personnel whose information is at issue are potential witnesses in the pending criminal prosecution. Based on these representations, we conclude release of the information at issue 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). Thus, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code.²

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.

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

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,

A handwritten signature in black ink that reads "Mili Gosar". The signature is fluid and cursive, with the first name "Mili" and last name "Gosar" clearly distinguishable.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 592191

Enc. Submitted documents

c: Requestor
(w/o enclosures)