



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2014

Mr. Michael S. Brennan
Counsel for the City of Alamo Heights
3303 Oakwell Court, Suite 120
San Antonio, Texas 78218

OR2014-03888

Dear Mr. Brennan:

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# 515852.

The City of Alamo Heights and the Alamo Heights Police Department (collectively, the "city"), which you represent, received four requests for various types of information regarding the same specified incident.¹ You indicate you will release a portion of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information contains a media release. We note 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

¹You indicate the city sought and received clarification of one of the requests for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

(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. Although you raise section 552.108 of the Government Code for this information, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the city may not withhold the previously released information we have marked under section 552.108 of the Government Code. However, we will discuss your arguments against disclosure of the remaining information.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Subsection 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Subsection 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You claim section 552.108(a)(1) of the Government Code for the submitted video recordings, audio recordings, and photographs. You claim section 552.108(b)(1) of the Government Code for the remaining e-mails. You state, and provide supporting documentation, the remaining information relates to a pending criminal investigation. Based

upon 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude that the city may withhold the remaining information under subsections 552.108(a)(1) and 552.108(b)(1) of the Government Code.

In summary, the city may not withhold the previously released information we have marked under section 552.108 of the Government Code. The city may withhold the remaining information under subsections 552.108(a)(1) and 552.108(b)(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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 515852

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)