



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Ms. Leticia Brysch  
City Clerk/PIO  
Office of the City Clerk  
City of Baytown  
P.O. Box 424  
Baytown, Texas 77522-0424

OR2016-14553

Dear Ms. Brysch:

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# 615882 (PIR# 6380).

The City of Baytown (the "city") received a request for all e-mails or texts received or responded to by a named individual within a specified period of time on a specified date. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed 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 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 you have marked relates to a city police department's pending criminal investigation and prosecution. Based upon this representation and our review, we find 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) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.<sup>1</sup> See Gov't Code §§ 552.117(a)(1), .024. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the city may not withhold the information we marked under section 552.117(a)(1).

Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. Gov't Code § 552.131(b). You state the information you have marked is related to pending business projects or prospects. Further, the documents reveal the city is in the process of negotiating incentive agreements with companies. Thus, we find the information you have marked consists of information about financial or other incentives being offered to business prospects by the city. Accordingly, the city may withhold the information you have marked under section 552.131(b) of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the

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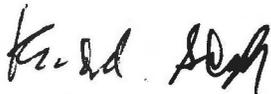
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

Government Code and the cellular telephone service is not paid for by a governmental body, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. The city may withhold the information you have marked under section 552.131(b) of the Government Code. The remaining information must be released.

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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/som

Ref: ID# 615882

Enc. Submitted documents

c: Requestor  
(w/o enclosures)