

**CAUSE NO. D-1-GN-23-006609**

<b>CITY OF FORT WORTH, TEXAS,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	<b>TRAVIS COUNTY, TEXAS</b>
	§	
<b>KEN PAXTON, ATTORNEY</b>	§	
<b>GENERAL OF TEXAS,</b>	§	
<b>Defendant.</b>	§	<b>419<sup>th</sup> JUDICIAL DISTRICT</b>

**PLAINTIFF’S FIRST AMENDED PETITION FOR DECLARATORY  
JUDGMENT AND REQUEST FOR PROTECTIVE ORDER**

**TO THE HONORABLE JUDGE:**

Pursuant to the provisions of Chapter 552 of the Texas Government Code, the City of Fort Worth (“City”) files this petition for declaratory judgment to (1) declare that the information at issue in this lawsuit is excepted from public disclosure and (2) to grant the City relief from compliance with Texas Attorney General Open Records Letter Rulings OR2023-31272 (AG No. 23-004532) and OR2023-23345A (AG No. 23-087867), and in support of this petition shows as follows:

**I. Preliminary Statement**

1. The City seeks relief from an Attorney General Open Records Letter Ruling that requires the City to release information that is confidential and not subject to public disclosure under Sections 552.108(a)(1) and 552.108(b)(1) of the Texas Government Code, as well as under Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177.

## **II. Discovery Level**

2. Discovery is intended to be conducted under a Level Three (3) Discovery Control Plan in accordance with Rule 190 of the Texas Rules of Civil Procedure.

## **III. Parties**

3. Plaintiff City of Fort Worth, Texas, is a home-rule municipal corporation located in Tarrant, Denton, Parker, and Wise Counties, Texas, duly incorporated under the Constitution and laws of the State of Texas and the Charter of the City of Fort Worth adopted December 11, 1924, as amended.

4. Defendant is the Honorable Ken Paxton, Attorney General of the State of Texas. He may be served with citation at 209 West 14<sup>th</sup> Street, Austin, Texas 78701, with a copy to Kelly McWethy, Attorney, Open Records Division, at 209 West 14<sup>th</sup> Street, Austin, Texas 78701.

5. Argelia Castanon (“Ms. Castanon” or the “Requestor”) is not a party to this lawsuit, but an individual who presented the City of Fort Worth with a request for public information that gives rise to this suit.

6. Kelsy Mittauer (“Ms. Mittauer” or the “Requestor”) is not a party to this lawsuit, but an individual who presented the City of Fort Worth with a request for public information that gives rise to this suit.

7. Harriet Ramos (“Ms. Ramos” or the “Requestor”) is not a party to this lawsuit, but an individual who presented the City of Fort Worth with a request for public information that gives rise to this suit.

8. Emily Wolf (“Ms. Wolf” or the “Requestor”) is not a party to this lawsuit, but an individual who presented the City of Fort Worth with a request for public information that gives rise to this suit.

#### **IV. Required Notice to Requestors**

9. Upon information and belief, Ms. Argelia Castanon’s address is 14785 Preston Rd., Suite 350, Dallas, Texas 75254, and her email address is [acastanon@anchor-risk.com](mailto:acastanon@anchor-risk.com).

10. Upon information and belief, Ms. Kelsy Mittauer’s address is 5233 Bridge St., Fort Worth, Texas 76103, and her email address is [kmittauer@cbs.com](mailto:kmittauer@cbs.com).

11. Upon information and belief, Ms. Harriet Ramos’s address is 808 Throckmorton St., Fort Worth, Texas 76102, and her email address is [hramos@star-telegram.com](mailto:hramos@star-telegram.com).

12. Upon information and belief, Ms. Emily Wolf’s address is 3008 E. Rosedale St., Fort Worth, Texas 76105, and her email address is [emily.wolf@fortworthreport.org](mailto:emily.wolf@fortworthreport.org).

13. Under Section 552.325(b) of the Texas Government Code, the City will make a timely, good-faith effort to notify each requestor by certified mail and by email of the following:

- (1) the existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;
- (2) the requestor’s right to intervene in the suit or to choose to not participate in the suit;

- (3) the fact that the suit is against the Attorney General in Travis County district court; and
- (4) the address and phone number of the office of the Attorney General.

## **V. Venue**

14. Venue is proper in Travis County under Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code, and under Chapter 552 of the Texas Government Code. Section 552.353(b)(3) requires a governmental body to file its petition for a declaratory judgment seeking relief from compliance with a decision of the Attorney General in a District Court in Travis County.

## **VI. Factual and Procedural History**

15. On April 21, 2023, the City received a written request from Ms. Ramos for “a copy of the Fort Worth Police Department’s Official General Orders.”<sup>1</sup> A true and correct copy of the request is attached as Exhibit “A.” The City believes that portions of the requested information are excepted from public disclosure pursuant to Sections 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177.

16. On May 3, 2023, the City requested a decision from the Attorney General regarding Ms. Ramos’s request dated April 21, 2023 pursuant Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177 and

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<sup>1</sup> Although the requestor initially requested all Fort Worth Police Department General Orders, she subsequently narrowed her request to seek only the Department’s Vehicle Pursuit Policy.



submitted a brief along with supporting documents. The City argued that the information and records requested were excepted from disclosure under (1) Section 552.108(b) of the Texas Government Code because the requested records included internal records of a law enforcement agency maintained for internal use in matters related to law enforcement or prosecution, and (2) Section 552.101 of the Government Code in conjunction with Section 418.177 of the Government Code because the requested records included records regarding certain equipment and tactical information utilized by a law enforcement agency to prevent, detect, respond to, and investigate acts of terrorism or related to criminal activity. A true and correct copy of the City's brief to the Attorney General is attached as Exhibit "B."

17. On June 30, 2023, the City received a written request from Argelia Castanon for a "copy of police accident report occurred 4/28/22. Accident occurred at 3220 North Main Street, Ft Worth, TX 76106 as result of a police speed chase. Copy of no chase policy and dispatch recording." A true and correct copy of the request is attached as Exhibit "C." The City believes that portions of the requested information are excepted from public disclosure pursuant to Sections 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177.<sup>2</sup>

18. On July 7, 2023, the City received a written request from Kelsy Mittauer for "general orders/standard operating procedure as it relates to pursuits. For example, rules for engaging in, continuing, terminating a pursuit." A true and correct copy of the request

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<sup>2</sup> Although the City did not raise an exception to the release of the requested information pursuant to Texas Government Code Section 552.108(a)(1), the Attorney General addressed this exception in its ruling.

is attached as Exhibit “D.” The City believes that portions of the requested information are excepted from public disclosure pursuant to Section 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177.

19. On July 7, 2023, the City received a written request from Harriet Ramos for “Fort Worth Police Department’s policy on police vehicle pursuits.” A true and correct copy of the request is attached as Exhibit “E.” The City believes that portions of the requested information are excepted from public disclosure pursuant to Section 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177.

20. On July 10, 2023, the City received a written request from Emily Wolf for “[t]he Fort Worth Police Department’s vehicle pursuit policy. The Fort Worth Police Department’s policy governing the use of spike strips/stop sticks/tire deflation devices.” A true and correct copy of the request is attached as Exhibit “F.” The City believes that portions of the requested information are excepted from public disclosure pursuant to Section 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177.

21. On July 24, 2023, the City of Fort Worth requested a decision from the Attorney General regarding the Castanon, Mittauer, Wolf, and Ramos July 2023 requests pursuant to Section 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177

and submitted a brief along with supporting documents.<sup>3</sup> The City argued that the information and records requested were excepted from disclosure under (1) Section 552.108(b) of the Texas Government Code because the requested records included internal records of a law enforcement agency maintained for internal use in matters related to law enforcement or prosecution, and (2) Section 552.101 of the Government Code in conjunction with Section 418.177 of the Government Code because the requested records included records regarding certain equipment and tactical information utilized by a law enforcement agency to prevent, detect, respond to, and investigate acts of terrorism or related to criminal activity. A true and correct copy of the City's brief to the Attorney General is attached as Exhibit "G."

## **VII. Basis for Suit**

22. On July 13, 2023, the Attorney General issued Open Records Letter Ruling No. OR2023-23345 (AG No. 23-069894), which the City received on July 17, 2023, in response to the Ramos April 2023 request. A true and correct copy of this letter ruling is attached as Exhibit "H." The Attorney General opined that the City could withhold a portion of the information at issue pursuant to Section 552.101 of the Texas Government Code in conjunction with Section 418.177 but also ruled that the City did not demonstrate the applicability of the law enforcement agency's internal record or notation exclusion to the remaining information at issue.

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<sup>3</sup> On July 17, 2023 (for Castanon), and July 21, 2023 (for Mittauer, Ramos, and Wolf), the City submitted ten-day briefs to the Attorney General stating that the requested information was excepted from disclosure under Sections 552.101 through 552.353 of the Texas Government Code.

23. On September 12, 2023, the Attorney General issued Open Records Letter Ruling No. OR2023-31272 (AG No. 23-004532) in response to the Castanon, Mittauer, Wolf, and Ramos July 2023 requests. A true and correct copy of this letter ruling is attached as Exhibit “I.” The Attorney General opined that the City could not withhold the information at issue under Section 552.108(b)(1) of the Government Code because the City did not demonstrate the applicability of the law enforcement agency's internal record or notation exclusion to the information at issue.

24. The Attorney General also opined that the City could not withhold the submitted information under Section 552.101 of the Texas Government Code in conjunction with Section 418.177 of the Texas Government Code because the City failed to demonstrate that the information at issue was confidential under the Texas Homeland Security Act (“HSA”).

25. The Attorney General also opined that to the extent the submitted information was subject to previous Attorney General determinations, the City could withhold only that information at issue consistent with those prior determinations.<sup>4</sup>

26. Finally, the Attorney General opined that the release of a police report responsive to the Castanon request would interfere with the detection, investigation, or prosecution of crime. Therefore, the Attorney General determined that City could withhold all requested information responsive to that particular request with the exception of “basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c).”

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<sup>4</sup> The City received the following previous determinations, each of which address the City’s ability to withhold portions of the requested information under Section 552.108 of the Texas Government Code: Open Records Letter Ruling Nos. 2018-09648 (2018); 2018-14766 (2018); 2018-26729 (2018); and 2019-29244 (2019).

27. On October 12, 2023, the Attorney General issued Open Records Letter Ruling No. OR2023-23345A (AG No. 23-087867) related to the April 2023 Ramos request. A true and correct copy of this letter ruling is attached as Exhibit “J.” The Attorney General advised that its prior ruling should be corrected, withdrew its previous ruling, and issued this ruling in its place. The Attorney General considered the arguments made by the City pursuant to Section 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Texas Government Code Section 418.177 and ruled that to the extent the submitted information was subject to previous Attorney General determinations, the City could withhold only that information at issue consistent with those prior determinations.

28. However, the Attorney General opined that the City could not withhold the information at issue under Section 552.108(b)(1) of the Government Code because the City did not demonstrate the applicability of the law enforcement agency's internal record or notation exclusion to the information at issue.

29. Finally, the Attorney General also opined that the City could not withhold the submitted information under Section 552.101 of the Texas Government Code in conjunction with Section 418.177 of the Texas Government Code because the City failed to demonstrate that the information at issue was confidential under the Texas Homeland Security Act (“HSA”).

## VIII. Issue Presented

30. The City seeks relief from two Attorney General Letter Rulings that require the City to release information that the City believes is confidential under Section 552.108(b)(1) of the Texas Government Code and Section 552.101 of the Texas Government Code in conjunction with Section 418.177 of the Texas Government Code. The information at issue is related to the City of Fort Worth Police Department's vehicle pursuit policy.

**A. The release of internal police records will interfere with law enforcement activities and must not be disclosed pursuant to Section 552.108(b)(1) of the Texas Government Code.**

31. Section 552.108 excepts from disclosure 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" if "release of the internal record or notation would interfere with law enforcement or prosecution." Tex. Gov't Code § 552.108(b)(1).

32. The Section protects information that if released would interfere with law enforcement and crime prevention. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See Open Records Decision No. 409 at 2 (1984).*

33. The City believes the requested information is an internal record of the City of Fort Worth's Police Department concerning the internal procedures used to carry out law enforcement activities and facilitate prosecution of crime, including pursuit tactics and the circumstances under which pursuits are initiated and terminated. The records at issue contain the specific procedures and personnel responsibilities applicable to vehicle

pursuits. Release of this information would undermine police responses by providing the public with tactical police procedures used during the detection, response, or investigation of criminal activity involving the pursuit of a vehicle. Further, should this information be released, the safety of the public and of police officers could be jeopardized. Therefore, the City argues that releasing the information in accordance with Texas Attorney General Open Records Letter Rulings OR2023-31272 and OR2023-23345A would be contrary to Section 552.108(b)(1) of the Texas Government Code.

**B. Information about certain equipment and tactical information used by law enforcement to prevent, detect, respond to, and investigate acts of terrorism and related criminal activity is protected under Section 552.101 of the Texas Government Code in conjunction with Section 418.177 of the Texas Government Code and must not be disclosed.**

34. Section 418.177 provides that “[i]nformation is confidential if the information: (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.” Tex. Gov’t Code § 418.177.

35. The City contends that the submitted information falls within the scope of Section 418.177 of the Texas Government Code. The release of the requested information makes it available to everyone. The release of this information to anyone will jeopardize the lives of police officers, citizens, and other individuals in the City. The records at issue contain the specific procedures and personnel responsibilities applicable to vehicle pursuits

conducted by the Fort Worth Police Department. Release of this information would undermine police responses in that it will provide the public with tactical police procedures that could be circumvented during the course of terrorist or other criminal activities. Therefore, the City believes that releasing the information in accordance with Texas Attorney General Open Records Letter Rulings OR2023-31272 and OR2023-23345A would be contrary to Section 552.101 of the Texas Government Code in conjunction with Section 418.177 of the Texas Government Code.

### **IX. Declaratory-Judgment Request**

36. The City requests that the Court declare that (1) the remaining unreleased documents requested by the requestors are confidential information under Section 552.108(b)(1) of the Texas Government Code and/or Section 552.101 of the Texas Government Code in conjunction with Section 418.177 of the Texas Government Code, and are not subject to disclosure under the Public Information Act; and (2) the City is not required to comply with Attorney General's Open Records Letter Rulings No. OR2023-31272 and OR2023-23345A.

### **X. Protective-Order Request**

37. The disclosure of the requested information would constitute an improper disclosure of confidential information excepted from the Public Information Act. Chapter 552 of the Government Code authorizes the Court to issue a protective order preventing disclosure of the requested information pending a final determination by the Court. Section 552.322 states that “[i]n a suit filed under this chapter, the court may order that the information at issue may be discovered only under a protective order until a final



determination is made.” Tex. Gov’t Code § 552.322. The City requests that this Court issue a protective order declaring that the information at issue is discoverable only under a protective order until the Court renders a final determination of the confidential nature of the information.

### **XI. *In Camera* Inspection of Information**

38. Section 552.3221 of the Government Code states in part that, “in any suit filed under this chapter, the information at issue may be filed with the court for *in camera* inspection as is necessary for the adjudication of the case. ... Upon receipt of the information at issue for *in camera* inspection, the court shall enter an order that prevents release to or access by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order.” Tex. Gov’t Code § 552.3221. Therefore, pursuant to Section 552.3221, the City will separately file the “information at issue” for *in camera* review by the Court.

### **XII. Prayer**

39. The City requests that the Attorney General be cited to appear and answer, and that the City be granted the following:

- (1) A protective order declaring that the records and information at issue are discoverable only under the protective order until a final determination of the confidential nature of the information is made;
- (2) A declaration that the specified records and information responsive to the requestors’ requests fall under Section 552.108(b)(1) of the Texas Government Code and/or Section 552.101 of the Texas Government Code in

conjunction with Section 418.177 of the Texas Government Code, and are confidential and not subject to disclosure;

- (3) A declaration under Section 552.353(b) of the Texas Government Code that grants the Plaintiff relief from compliance with Open Records Letter Rulings OR2023-31272 and OR2023-23345A;
- (4) Attorney's fees;
- (5) Costs of lawsuit; and
- (6) Such other and further relief under law and equity to which the City may be justly entitled.

Respectfully submitted,

*/s/ Keanan M. Hall*

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Keanan M. Hall  
Assistant City Attorney  
State Bar No. 24060238  
[Keanan.Hall@fortworthtexas.gov](mailto:Keanan.Hall@fortworthtexas.gov)

Trey Qualls  
Assistant City Attorney  
State Bar No. 24099918  
[Trey.Qualls@fortworthtexas.gov](mailto:Trey.Qualls@fortworthtexas.gov)

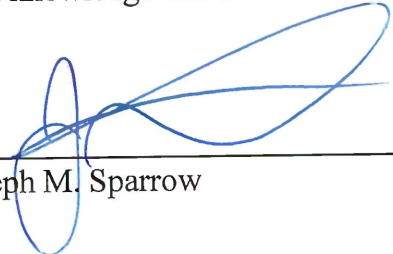
CITY OF FORT WORTH  
200 Texas Street  
Fort Worth, Texas 76102-6311  
817-392-7600  
817-392-8359 (fax)

***Attorneys for Plaintiff City of Fort Worth***

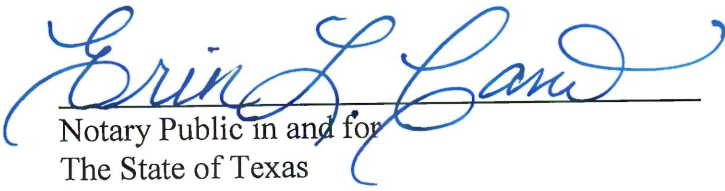
**VERIFICATION**

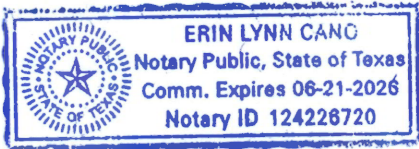
**STATE OF TEXAS**           §  
  §  
**COUNTY OF TARRANT**   §

BEFORE ME, the undersigned authority, on this day personally appeared Joseph M. Sparrow, who after being by me duly sworn on his oath, deposed and said that he is the Assistant Police Chief for the City of Fort Worth, Plaintiff in the above-entitled and numbered cause; that he has read the above and foregoing amended petition and that the facts contained therein are within his personal knowledge and are true and correct.

  
\_\_\_\_\_  
Joseph M. Sparrow

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority,  
under my hand and seal of office this 20<sup>th</sup> day of October, 2023.

  
\_\_\_\_\_  
Notary Public in and for  
The State of Texas



**CERTIFICATE OF SERVICE**

I certify that on the 23rd day of October, 2023, a true and correct copy of the foregoing document was delivered in accordance with the Texas Rules of Civil Procedure to the individual(s) listed below:

**Via eFile-**

KEN PAXTON

Attorney General of Texas

BRENT WEBSTER

First Assistant Attorney General

SHAWN E. COWLES

Deputy Attorney General for Civil Litigation

SARAH WOLFE

Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

Administrative Law Division

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

sarah.wolfe@oag.texas.gov

ATTORNEYS FOR DEFENDANT

*/s/ Keanan M. Hall*

\_\_\_\_\_ **Keanan M. Hall**

**City of Fort Worth**  
**Public Information Request**  
(web form)

**Date:** 4/21/2023 9:42:35 AM

**Request Number:** P007450-042123

**Due Date:** 5/5/2023

**REQUESTOR IDENTIFICATION:**

Name: Harriet Ramos

Company Name:

Address:

Telephone: 972-704-5653 Ext.

Fax:

Email: hramos@star-telegram.com

# Other | (Police Open Records Request #P007450-042123)

## Police Open Records Request Details

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Is this request being made on behalf of the media?: Yes, this request is being made on behalf of the media.

Type of Records: Other |

Date From:

Date To:

Incident Number: The Incident Number will be a 9 digit number, with the first two digits notating the year. Example: 200880751 or 200069265

Phone Number used to call 911 (xxx-xxx-xxxx):

Involved Parties: Fort Worth Police Department

Location of Occurrence: not applicable

Time of Occurrence: not applicable

**Describe the document(s) you are requesting:** I'm requesting a copy of the Fort Worth Police Department's Official General Orders

Method to Receive Clarification: I do consent to clarification via email

### Exemptions and Exclusions

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. [Click here to see complete list of all exemptions](#)

Please make a selection below:  I Agree to None

Electronic via Records Center

Preferred Method to Receive Records:

I Agree: Yes **By checking the "I Agree" box, you agree and acknowledge your electronic signature is valid and binding in the same force and effect as a handwritten signature.**



J. Joel Tovanche  
Assistant City Attorney

Phone: (817) 392-7600  
juan-joel.tovanche@fortworthtexas.gov

May 3, 2023

Honorable Ken Paxton  
Texas Attorney General  
ATTN: Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**Certified Mail No.:** 7021 2720 0000 6744 0002

Re: City of Fort Worth Public Information Request No. P007450-042123  
Request for Specified City Records

Dear Attorney General Paxton:

On April 21, 2023, the City of Fort Worth (the “City”) received a written request from Harriet Ramose (the “requestor”) for a specified police record. A copy of the request is included as Exhibit “A”.

The City finds portions of the submitted information<sup>1</sup> is excepted from disclosure under Section 552.101 of the Texas Government Code in conjunction with Section 418.177 of the Texas Government Code. In short, the City seeks a ruling from your office in accordance with Section 552.301 of the Texas Government Code. Law pertinent to this matter is elaborated as follows:

**Certain Equipment and Tactical Information for the Law Enforcement Investigation Exception is excepted under Texas Disaster Act/Homeland Security Laws.**

The requested records are held by the City’s Police Department to prevent, detect, respond to, and investigate acts of terrorism or related criminal activity; thus, their release to the public would compromise law enforcement purposes. The release of these records would violate Section 418.177 of the Texas Government Code which is part of the Texas Disaster/Homeland Security Act. These sections pertain to the confidentiality of certain information relating to emergency response providers.

The City finds that the submitted information is confidential pursuant to section 418.177 of the Government Code Section 418.177, which provides:

Information is confidential if the information:

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<sup>1</sup> Exhibit “B” contains the information at issue.

**OFFICE OF THE CITY ATTORNEY**

The City of Fort Worth ★ 200 Texas Street, 3<sup>rd</sup> Floor ★ Fort Worth, Texas 76102  
817-392-7600 ★ Fax 817-392-8359

Honorable Ken Paxton  
CFW PIR No. P007450-042123 Ramos, H.  
May 3, 2023May 3, 2023  
Page 2 of 2

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Tex. Gov't Code §§ 418.177.

The City contends that the submitted information falls within the scope of of the Texas Government Code. Release of the information in Exhibit "B" would render it available to everyone. Terrorists and criminals are not barred from making public information requests. The release of this information to anyone will jeopardize the lives of police officers, citizens, and other individuals in the City. The information the City seeks to withhold relates to the security equipment and is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity.

The City contends that this information should be excepted under section 552.101 in conjunction with section 418.177 of the Texas Government Code. Therefore, the submitted information may be withheld as confidential under section 418.177.

In sum, the City seeks a ruling from your office in accordance with Section 552.301 of the Texas Government Code.

Respectfully submitted,



J. Joel Tovanche  
Assistant City Attorney

Enclosures

Cc: Harriet Ramos

**Via Electronic Mail:** [hramos@star-telegram.com](mailto:hramos@star-telegram.com)



**From:** [Argelia Castanon](#)  
**To:** [Public Information Administrator](#)  
**Subject:** Police report request. Date: 4/28/22 Emigdio Luna Zustaita DOB: 8/06/1971  
**Date:** Friday, June 30, 2023 3:51:45 PM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image002.jpg](#)  
[image002.jpg](#)

**CAUTION:** This email originated from outside of the City of Fort Worth email system. Do not click any links or open attachments unless you recognize the sender and know the content is safe.

Police Dpt.

Anchor Claims is the 3<sup>rd</sup> party Occupational Claims Administrator for Insured: Mexico Foods/ EL Rancho#29.

Injured party/name: Emigdio Luna Zustaita who was ran over by party being followed by police.

Respectfully we are requesting:

- Copy of police accident report occurred 4/28/22. Accident occurred at 3220 North Main Street, Ft Worth, TX 76106 as result of a police speed chase.
- Copy of no chase policy and dispatch recording.

Thank you,



**Argelia Castanon**

*Assistant Claims Manager*

Direct: 214.295.1537 | [ACastanon@anchor-risk.com](mailto:ACastanon@anchor-risk.com)

Fax: 214.295.1700

**Anchor Risk and Claims Management**

14785 Preston Rd, Ste 350 | Dallas, TX 75254

[www.anchor-risk.com](http://www.anchor-risk.com)

COVID-19 Notice: Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warrantee. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language. **BINDING NOTICE:** Insurance coverage cannot be bound, amended, changed or cancelled via an e-mail message without confirmation from an authorized representative. **CONFIDENTIALITY NOTICE:** The information contained in this communication, including attachments, may contain privileged and confidential information that is intended only for the exclusive use of the addressee. If the reader of this message is not the intended recipient, or the employee or agent responsible for

delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error please notify us by telephone immediately.

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.

**City of Fort Worth**  
**Public Information Request**  
(web form)

**Date:** 7/7/2023 10:25:39 AM

**Request Number:** P011376-070723

**Due Date:** 7/21/2023

**REQUESTOR IDENTIFICATION:**

Name: kelsy mittauer  
Company Name:  
Address: 5233 bridge street  
fort worth 76103  
Telephone: 940-389-0385 Ext.  
Fax:  
Email: kmittauer@cbs.com

# Other | (Police Open Records Request #P011376-070723)

## Police Open Records Request Details

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Is this request being made on behalf of the media?: Yes, this request is being made on behalf of the media.

Type of Records: Other |

Date From:

Date To:

Incident Number: The Incident Number will be a 9 digit number, with the first two digits notating the year. Example: 200880751 or 200069265

Phone Number used to call 911 (xxx-xxx-xxxx):

Involved Parties: n/a

Location of Occurrence: n/a

Time of Occurrence: n/a

**Describe the document(s) you are requesting:** General orders / standard operating procedure as it relates to pursuits For example, rules for engaging in, continuing, terminating a pursuit

Method to Receive Clarification: I do consent to clarification via email

### Exemptions and Exclusions

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. [Click here to see complete list of all exemptions](#)

Please make a selection below:  I Agree to None

Electronic via Records Center

Preferred Method to Receive Records:

I Agree: Yes **By checking the "I Agree" box, you agree and acknowledge your electronic signature is valid and binding in the same force and effect as a handwritten signature.**

City of Fort Worth  
Public Information Request  
(web form)

**Date:** 7/7/2023 1:31:21 PM

**Request Number:** P011391-070723

**Due Date:** 7/21/2023

**REQUESTOR IDENTIFICATION:**

Name: Harriet Ramos

Company Name:

Address:

Telephone: 972-704-5653 Ext.

Fax:

Email: hramos@star-telegram.com

**REQUEST DETAILS:**

**Type of Records Requested:** Other

**Incident Number:**

**Date From:**      **Date To:**      **Time of Occurrence:**

**Location of Occurrence:** Not applicable

**Involved Parties:** Not applicable

**Name of One or More Persons Known to be a Subject of the Recording:**

**Description of Records Requested:** Fort Worth Police Department's policy on police vehicle pursuits

**Consent to Exclusions or Redactions:**

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. [Click here to see complete list of all exemptions](#)

Requestor Selection:      1 Agree to None

# Other | (Police Open Records Request #P011391-070723)

## ▼ Police Open Records Request Details

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Is this request being made on behalf of the media?: Yes, this request is being made on behalf of the media.

Type of Records: Other |

Date From:

Date To:

Incident Number: The Incident Number will be a 9 digit number, with the first two digits notating the year. Example: 200880751 or 200069265

Phone Number used to call 911 (xxx-xxx-xxxx):

Involved Parties: Not applicable

Location of Occurrence: Not applicable

Time of Occurrence: Not applicable

**Describe the document(s) you are requesting:** Fort Worth Police Department's policy on police vehicle pursuits

Method to Receive Clarification: I do consent to clarification via email

### Exemptions and Exclusions

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. [Click here to see complete list of all exemptions](#)

Please make a selection below:  I Agree to None

Electronic via Records Center

Preferred Method to Receive Records:

I Agree:  **Yes** **By checking the "I Agree" box, you agree and acknowledge your electronic signature is valid and binding in the same force and effect as a handwritten signature.**

**City of Fort Worth**  
**Public Information Request**  
(web form)

**Date:** 7/10/2023 9:01:24 AM

**Request Number:** P011447-071023

**Due Date:** 7/24/2023

**REQUESTOR IDENTIFICATION:**

Name: Emily Wolf  
Company Name:  
Address: 900 Matisse Drive  
Fort Worth TX 76107  
Telephone: 512-348-4539 Ext.  
Fax:  
Email: emily.wolf@fortworthreport.org

# Other | (Police Open Records Request #P011447-071023)

## ▼ Police Open Records Request Details

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Is this request being made on behalf of the media?: Yes, this request is being made on behalf of the media.

Type of Records: Other |

Date From:

Date To:

Incident Number: The Incident Number will be a 9 digit number, with the first two digits notating the year. Example: 200880751 or 200069265

Phone Number used to call 911 (xxx-xxx-xxxx):

Involved Parties: N/A

Location of Occurrence: N/A

Time of Occurrence: N/A

**Describe the document(s) you are requesting:** Emily Wolf 1425 Fifth Avenue, Fort Worth, Texas, 76104 Dear records custodian, This is a request for records under the Texas Public Information Act, Tex. Gov't Code §552.001 et seq. I request that you make available to me the following records:  
The Fort Worth Police Department's vehicle pursuit policy.  
The Fort Worth Police Department's policy governing the use of spike strips/stop sticks/ tire deflation devices.

I request that all fees for locating and copying the records be waived, as the information I obtain through this request will be used to inform the public through a written story at The Fort Worth Report. Please let me know in advance if there will be any charge for filing this request. If any records are withheld, please cite the portion of the law that allows closure. Thanks, Emily Wolf 512-348-4539.

Method to Receive Clarification: I do consent to clarification via email

### Exemptions and Exclusions

The City is prohibited from releasing some types of information. In an effort to expedite your request, please check the box if you agree to exclude or redact from the requested records all of the information found in these exclusion categories. Click here to see complete list of all exemptions

Please make a selection below: I Agree to All of the Exclusions

Electronic via Records Center

Preferred Method to Receive Records:

I Agree: Yes **By checking the "I Agree" box, you agree and acknowledge your electronic signature is valid and binding in the same force and effect as a handwritten signature.**





Christopher Mullins  
Assistant City Attorney

Phone: (817) 392-7600  
Christopher.Mullins@fortworthtexas.gov

July 24, 2023

Honorable Angela Colmenero  
Texas Attorney General  
ATTN: Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**Certified Mail No.:** 7022 1670 0001 4302 0751

Re: City of Fort Worth Public Information Request Nos. E003606-063023, P0113676-070723, P011391-070723, and P011447-071023 - Request for Police Records

Dear Attorney General Colmenero:

On June 30, 2023, July 7, 2023, July 7, 2023, and July 10, 2023, the City of Fort Worth (the “City”) received written requests from Angelia Castanon, Kelsy Mittauer, Harriet Ramos, and Emily Wolf, respectively, (the “requestors”) for a portion of the Fort Worth Police Department’s General Orders.<sup>1</sup> Copies of the requests are included as Exhibit “A”.

On July 17, 2023 (Castanon), and July 21, 2023 (Mittauer, Ramos, and Wolf), the City requested a ruling from your office and notified you that the City would submit the requested information and the City’s arguments regarding the applicability of the claimed exceptions within 15 business days of the date the request was received.

The City believes that the information submitted for your office’s review are excepted from disclosure under sections 552.108(b)(1) and 552.101 of the Texas Government Code in conjunction with section 418.177 of the Texas Government Code. Therefore, the City is seeking a ruling from your office in accordance with section 552.301 of the Texas Government Code. Exhibit “B” contains the information at issue.

In OR2015-85050, OR2016-24064, OR2017-19690, OR2018-0964, OR2018-14766, OR2018-26729, and OR2019-29244 your office ruled that the City could withhold portions of the Fort Worth Police Department General Orders. For the marked portions of the General Orders for which the facts and circumstances have not changed since these previous rulings were issued, the City relies on these previous rulings cited will withhold in accordance with those rulings. However, the City asserts that the remaining portions of the General Orders are confidential under the aforementioned exceptions.<sup>2</sup>

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<sup>1</sup> The City of Fort Worth was closed on July 4, 2023, in observance of Independence Day.

<sup>2</sup> The City has included additional markings and comments in Exhibit “B”.

**OFFICE OF THE CITY ATTORNEY**

The City of Fort Worth ★ 200 Texas Street, 3<sup>rd</sup> Floor ★ Fort Worth, Texas 76102  
817-392-7600 ★ Fax 817-392-8359

**The release of internal records will interfere with law enforcement activities.**

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” TEX. GOV'T CODE § 552.108(b)(1).

A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. See *Id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.--Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. See Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

Your office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (1989)(detailed guidelines regarding police department's use of force policy), 508 (1988)(information relating to future transfers of prisoners), 456 (1987)(release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984)(sketch showing security measures for forthcoming execution), 409 (1984)(information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982)(release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980)(statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 211 (1978)(information relating to undercover narcotics investigations), 143 (1977)(log revealing use of electronic eavesdropping equipment).

To avoid revealing the details of law enforcement practices, the City has submitted additional arguments in Exhibit “B”. Based on these arguments, the City asserts that the submitted information is excepted under section 552.108(b)(1) of the Texas Government Code.

**Certain Equipment and Tactical Information for the Law Enforcement Investigation Exception is excepted under Texas Disaster Act/Homeland Security Laws.**

The requested information is held and utilized by the City’s Police Department to prevent, detect, respond to, and investigate acts of terrorism or related criminal activity and its release to the public would compromise law enforcement purposes. The release of the information would

violate section 418.177 of the Texas Government Code which is part of the Texas Disaster/Homeland Security Act. These sections pertain to the confidentiality of certain information relating to emergency response providers.

The City also believes that the submitted information may be confidential pursuant to section 418.177 of the Government Code.

Section 418.177 provides:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

TEX. GOV'T CODE §§ 418.177.

The City contends that the submitted information falls within the scope of section 418.177 of the Texas Government Code. The release of this information in Exhibit "B" makes it available to everyone. Terrorists and criminals are not barred from making public information requests. The release of this information to anyone will jeopardize the lives of police officers, citizens, and other individuals in the City. The information the City seeks to withhold relates to procedures maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity.

The City believes that this information is excepted under section 552.101 in conjunction with section 418.177 of the Texas Government Code. Therefore, the submitted information may be withheld as confidential under section 418.177.

Respectfully submitted,



Christopher Mullins  
Assistant City Attorney

Honorable Angela Colmenero  
CFW PIR Nos. E003606-063023, P0113676-070723, P011391-070723, and P011447-071023  
July 24, 2023  
Page 4 of 4

Enclosures

Bcc: Argelia Castanon  
Anchor Risk and Claims Management  
14785 Preston Rd, Suite 350  
Dallas, TX 75254

*via electronic mail:* [acastanon@anchor-risk.com](mailto:acastanon@anchor-risk.com)

Kelsy Mittauer  
5233 Bridge Street  
Fort Worth, TX 76103

*via electronic mail:* [kmittauer@cbs.com](mailto:kmittauer@cbs.com)

Harriet Ramos

*via electronic mail:* [hramos@star-telegram.com](mailto:hramos@star-telegram.com)

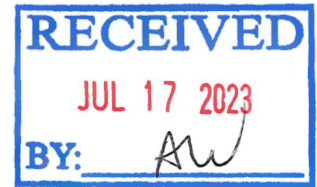
Emily Wolf

*via electronic mail:* [emily.wolf@fortworthreport.org](mailto:emily.wolf@fortworthreport.org)



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

**City of  
Fort Worth**  
**EXHIBIT  
H**



July 13, 2023

Mr. J. Joel Tovanche  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102

OR2023-23345

Dear Mr. Tovanche:

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# 069894 (ORR# P007450-042123).

The City of Fort Worth (the "city") received a request for its police department's general orders. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 418.177 of the Government Code. Section 418.177 provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under section 418.177. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting these sections must adequately explain how the responsive information falls within the scope of the provisions. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We understand you to argue the submitted information is collected, assembled, and maintained by the city for the purpose of preventing, detecting, and investigating acts of terrorism or related criminal activity. You state "release of this information to anyone will jeopardize the lives of police officers, citizens, and other individuals in the [c]ity." Upon review, we agree portions of the submitted information were collected, assembled, or maintained by or for the city for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity, and relates to an assessment of the risk or vulnerability of persons and property to an act of terrorism or related criminal activity. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. However, you have failed to demonstrate the remaining information was collected, assembled, or maintained by or for the city for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity, and relates to an assessment of the risk or vulnerability of persons and property to an act of terrorism or related criminal activity. Accordingly, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Colin Henry  
Assistant Attorney General  
Open Records Division

CEH/mo



Mr. J. Joel Tovanche - Page 3

Ref: ID# 069894

Enc. Submitted documents

c: Requestor  
(w/o enclosures)



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

September 12, 2023

Mr. Jeremy Anato-Mensah  
Mr. Christopher Mullins  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102

OR2023-31272

Dear Mr. Anato-Mensah and Mr. Mullins:

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# 23-004532 (PIR Nos. E003606, P011376, P011391, P011447, and P012139).

The Fort Worth Police Department (the "department") received five requests from different requestors for information pertaining to vehicle pursuits. 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 representative sample of information.<sup>1</sup>

Initially, you inform us portions of the submitted information were the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2018-09648 (2018), 2018-14766 (2018), 2018-26729 (2018), and 2019-29244 (2019). In the previous rulings, we determined the department may withhold some of the information at issue under section 552.108 of the Government Code. You state the law, facts, or circumstances on which the prior rulings were based have not changed. Accordingly, the department may continue to rely on Open Records Letter Nos. 2018-09648, 2018-14766, 2018-26729, and 2019-29244 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the department's arguments against release of the submitted information that is not encompassed by the previous rulings.

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.



Next, we note the department did not submit information responsive to the first request for accident reports or dispatch recordings. We assume, to the extent any information responsive to the first request for accident reports or dispatch recordings existed on the date the department received the first request, the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 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 the requirements of Section 552.021 if:

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

*Id.* § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 531 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a pending investigation or prosecution. Based on your representation and our review, we find release of report number 230051334 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, section 552.108(a)(1) is applicable to report number 230051334. However, you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1) to any of the remaining information and the department may not withhold any of the remaining information under subsection 552.108(a)(1) or subsection 552.108(b)(1).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information

considered to be basic information). Accordingly, with the exception of basic information, the department may withhold report number 230051334 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.177 of the Government Code provides the following:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Upon review, we find you have failed to demonstrate any of the remaining information consists of information that is confidential under section 418.177. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

In summary, the department may continue to rely on Open Records Letter Nos. 2018-09648, 2018-14766, 2018-26729, and 2019-29244 as previous determinations and withhold or release the identical information in accordance with those rulings. With the exception of basic information, the department may withhold report number 230051334 under section 552.108(a)(1) of the Government Code. The department 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/pt

Ref: ID# 23-004532

c: Requestor



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 12, 2023

Mr. Tyler F. Wallach  
Senior Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102

OR2023-23345A

Dear Mr. Wallach:

This office issued Open Records Letter No. 2023-23345 (2023) on July 13, 2023. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. Consequently, this decision serves as the corrected ruling and is a substitute for Open Records Letter No. 2023-23345. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Your request was assigned ID# 23-087867 (ORR# P007450-042123).

The City of Fort Worth (the "city") received a request for its police department's general orders. You claim some of 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.

Initially, you inform us portions of the submitted information were the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2018-09648 (2018), 2018-14766 (2018), 2018-26729 (2018), and 2019-29244 (2019). In the previous rulings, we determined the city may withhold some of the information at issue under section 552.108 of the Government Code. You state the law, facts, or circumstances on which the prior rulings were based have not changed. Accordingly, the city may continue to rely on Open Records Letter Nos. 2018-09648, 2018-14766, 2018-26729, and 2019-29244 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the city's arguments against release of the submitted information that is not encompassed by the previous rulings.

Next, we note, and you acknowledge, the city has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101 and 552.108 of the Government Code for the remaining information. Because sections 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the remaining information. However, we find you have failed to establish a compelling reason to address your remaining exception.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. Section 418.177 of the Government Code provides the following:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Upon review, we find you have failed to demonstrate any of the remaining information consists of information that is confidential under section 418.177. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

In summary, the city may continue to rely on Open Records Letter Nos. 2018-09648, 2018-14766, 2018-26729, and 2019-29244 as previous determinations and withhold or release the identical information in accordance with those rulings. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Colin Henry  
Assistant Attorney General  
Open Records Division

CEH/jxd

Ref: 1D# 23-087867

c: Requestor

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Nikki McKenzie on behalf of Keanan Matthews-Hall

Bar No. 24060238

Nikki.McKenzie@fortworthtexas.gov

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Status as of 10/25/2023 3:28 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Laetitia ColemanBrown		Laetitia.Brown@fortworthtexas.gov	10/23/2023 10:54:52 AM	SENT
Brent Webster	24053545	brent.webster@oag.texas.gov	10/23/2023 10:54:52 AM	SENT
Carl (Trey) RayQualls		trey.qualls@fortworthtexas.gov	10/23/2023 10:54:52 AM	SENT
Nikki McKenzie		nikki.mckenzie@fortworthtexas.gov	10/23/2023 10:54:52 AM	SENT
Shawn Cowles	24108813	Shawn.Cowles@oag.texas.gov	10/23/2023 10:54:52 AM	ERROR
Sarah Wolfe		sarah.wolfe@oag.texas.gov	10/23/2023 10:54:52 AM	ERROR