



City of Odessa  
City Attorney's  
Office

October 18, 2024

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

Dear Attorney General Paxton:

On October 11, 2024, the City of Odessa (the "City") received a public information request seeking all expenses claimed by Chris Adams since Jan. 1, 2024. This should include, but not be limited to, travel and meals. Please include vouchers and receipts. Plus, any reimbursements by Mr. Adams. Our office has assigned this request ID #R004767-100924 and R004769-100924.

Additionally, the City received a public information request seeking any complaints filed with Human Resources or City Manager John Beckmeyer against Agapito Bernal since Aug. 31, 2024, along with any disciplinary measures, including, but not limited to verbal and written reprimands. Our office has assigned this request ID #R004769-100924.

The City of Odessa believes these two requests are tied together and pursuant to Section 552.301 of the Texas Government Code, the City requests that you issue an opinion as to whether or not the City must disclose portions of the information requested above. It is the City's position that portions of the requested information are exempt from public disclosure under certain sections of the Government Code.

A copy of the public information request is enclosed herewith as Exhibit "A\_#R004767-100924" and Exhibit "A\_#R004769-100924".

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According to the Human Resources, Purchasing and Finance departments, the records enclosed as Exhibit "B" and Exhibit "C" are responsive to the request for information.

No portion of Exhibit "B" and Exhibit "C" have been disclosed to the requestor.

### **Active Investigation and Pending Prosecution**

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 of the Texas Government Code if release of the information would interfere with the detection, investigation, or prosecution of crime. Texas Gov't Code § 552.108(a)(1) and 552.108(b)(1)

Prosecution/Investigation of the crime which forms the basis for the information contained in Exhibit "B" and Exhibit "C" are still pending. Therefore, the release of the information contained therein would interfere with further investigation and prosecution of the crime. The City has a legitimate interest in preserving the secrecy of its records from the eyes of defendants and their counsel in criminal actions. *Houston Chronicle Pub. Co. v. City of Houston*, 531 S.W.2d 177, 186 (Tex.Civ.App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

### **Interference with Law Enforcement**

Exhibit "B" and Exhibit "C" contains information that, if disclosed, would unduly interfere with law enforcement and the detection, investigation, or prosecution of crime. Section 552.108 of the Government Code provides in pertinent part:

- (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; [and]
- (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[.]

The internal investigation in Exhibit "B" and Exhibit "C" are still ongoing by the City of Odessa's internal auditor. The City of Odessa will need to gather all evidence for the Texas Rangers and the premature release of information may hinder their investigation. Exhibit "C" has been sent to an external source to conduct the investigation.

Based on the foregoing, it is the City's position that releasing Exhibit "B" and Exhibit "C" would unduly interfere with law enforcement and the detection, investigation, or prosecution of crime.

It is in the City's opinion that Exhibit "B" and Exhibit "C" are related to Texas Penal Code - PENAL § 39.02. Abuse of Official Capacity

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

- (1) violates a law relating to the public servant's office or employment; or

- (2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

- (1) a Class C misdemeanor if the value of the use of the thing misused is less than \$100;

- (2) a Class B misdemeanor if the value of the use of the thing misused is \$100 or more but less than \$750;

- (3) a Class A misdemeanor if the value of the use of the thing misused is \$750 or more but less than \$2,500;

- (4) a state jail felony if the value of the use of the thing misused is \$2,500 or more but less than \$30,000;

- (5) a felony of the third degree if the value of the use of the thing misused is \$30,000 or more but less than \$150,000;

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The City urges that in accordance with the Texas Public Information Act, the City is not waiving any claims of confidentiality or exemption to disclosure because of the required submission of the records under the Act.

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Respectfully Submitted,

A handwritten signature in black ink that reads "Daniel C. Jones". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

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