



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2010

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, TX 79457

OR2010-02156

Dear Ms. Sims:

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# 370331.

The City of Lubbock (the "city") received a request for twelve categories of information related to the city's animal services department and animal euthanasia services. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes receipts and invoices pertaining to the expenditure of funds by the city that fall within the purview of subsection 552.022(a)(3). Although you assert that these documents are excepted under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the city may not withhold these documents under section 552.108. However, you also raise section 552.137 which is considered other law for purposes of section 552.022. Additionally, we note that portions of the information subject to section 552.022 may be excepted from disclosure under sections 552.117, 552.130, and 552.136 of the Government Code, which are also considered other law for purposes of section 552.022.¹ Accordingly, we will consider the applicability of these exceptions to the information that is subject to section 552.022. We will also consider your claim under section 552.108 for the information that is not subject to section 552.022.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees whose information is at issue timely elected to keep their personal information confidential, the city must withhold the information we have marked in the documents subject to section 552.022 under section 552.117(a)(1). The city may not withhold the information we have marked under section 552.117(a)(1) if the employees did not timely elect to keep this information confidential.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). The city

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

must withhold the Texas motor vehicle record information we have marked in the documents that are subject to section 552.022 under section 552.130 of the Government Code.

Section 552.136 states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). The city must withhold the credit card numbers we have marked in the documents that are subject to section 552.022 under section 552.136 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code 552.108(a)(1). Generally, 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information consists of documents and evidence related to a current criminal investigation by the city’s police department. You state the investigation is being reviewed for potential prosecution. Based on this representation, we find the release of the information not subject to section 552.022 would interfere with the detection, investigation, and prosecution of the alleged crimes. Therefore, we conclude section 552.108(a)(1) is applicable to this information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the city may withhold the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the following from the information subject to section 552.022(a)(3): (1) the information we have marked under section 552.117(a)(1) of the Government Code, if the employees whose information is at issue timely elected to keep their personal information confidential, (2) the Texas motor vehicle record information we

have marked under section 552.130 of the Government Code, (3) the credit card numbers we have marked under section 552.136 of the Government Code, and (4) the e-mail address we have marked under section 552.137 of the Government Code.² The city may withhold the information not subject to section 552.022(a)(3) under section 552.108(a)(1) 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 370331

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, credit card numbers under section 552.136, and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.