



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2010

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
For the City of Grapevine
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2010-09156

Dear Mr. Boyle:

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# 383607.

The City of Grapevine (the "city"), which you represent, received a request for the personnel files of two named animal control officers, the resignation letters of these officers, documents related to the audit of missing funds in any animal control account, and police reports related to the named officers. The requestor has excluded social security numbers and driver's license numbers from his request. Thus, any social security numbers or driver's license numbers within the submitted information are not responsive to the present request for information and the city need not release this information in response to the request. You state the city will release some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information, some of which we understand to be a representative sample.²

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

²We 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.

Initially, we note portions of the submitted information are 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 of payments to the city, as well as information in accounts and vouchers related to the expenditure of public funds. This information, which we have marked, is subject to section 552.022(a)(3). The city may only withhold this information if it is expressly confidential under "other law." Although the city raises section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the city may not withhold the information subject to section 552.022, which we have marked, under section 552.108.

Next, we address your arguments against disclosure of the remaining information not subject to section 552.022. Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the release of the remaining submitted information would interfere with a criminal case being investigated by the Grapevine Police Department. Based on your representations and our review, we conclude that the city may withhold the remaining submitted information under section 552.108(a)(1). *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).

Finally, we note that some of the submitted information that is subject to section 552.022 is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General

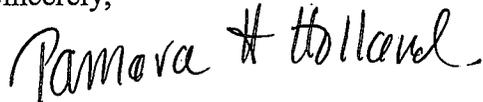
Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must release the information we have marked under section 552.022 of the Government Code, but any information protected by copyright must be released in accordance with copyright law. The city may withhold the remaining submitted information under section 552.108 of the Government Code.³

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/dls

Ref: ID# 383607

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument under section 552.130.