ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2010

Mr. R. Kinley Hegglund, Jr.
Senior Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-10250

Dear Mr. Hegglund:

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# 386260 (City ID Nos. 127, 136, & 152).

The City of Wichita Falls (the "city") received three requests for surveillance video recordings from two specified locations for the night of April 20, 2010, and information taken from a named individual's Global Positioning System ("GPS") ankle monitoring device for April 16 through 20, 2010. 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 information. We have also considered comments submitted by the requestors. *See* Gov't Code § 552.304 (providing that an interested third party may submit comments stating why information should or should not be released).

Initially, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Under section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated

exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

On April 29, 2010, the city received a request for information seeking, in part, information taken from a named individual's GPS ankle monitoring device for April 20, 2010. You do not inform this office the city was closed for business any days between April 29, 2010 and May 20, 2010. Thus, the fifteen business-day deadline for the city to send this office information responsive to this request was May 20, 2010. *See id.* § 552.301(e). Although you timely submitted a brief requesting a ruling on the other information sought in this April 29 request, this brief does not mention the requested GPS ankle monitor information. On May 19, 2010, the city received another request from the same requestor seeking information taken from the named individual's GPS ankle monitoring device, this time for the dates April 16 through 20, 2010. You submitted GPS ankle monitor information for April 20, 2010, to this office in a letter postmarked on May 26, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, because the city received a request for this information on April 29, 2010, but did not request a ruling on this information or submit this information to this office as required by section 552.301 until May 26, 2010, we find the city failed to comply with the requirements of section 552.301 with respect to the portion of the April 29, 2010, request seeking GPS ankle monitor information. Further, as of the date of this letter, you have not submitted any responsive GPS ankle monitor information for April 16 through 19, 2010. Thus, we find the city additionally failed to comply with the requirements mandated by section 552.301 with respect to the portion of the May 19, 2010, request seeking GPS ankle monitor information for April 16 through 19, 2010.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). You now claim the submitted GPS ankle monitor information for April 20, 2010, is excepted from disclosure under section 552.108 of the Government Code. However, 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). We note that, although your claim under section 552.108

for the GPS ankle monitor information for April 20, 2010, was timely with respect to the second request for this information, it was untimely with regard to the first request. Thus, in failing to comply with section 552.301 with respect to the portion of the April 29, 2010, request seeking the GPS ankle monitor information for April 20, 2010, the city waived its claim under section 552.108 for that information. Additionally, in failing to comply with section 552.301 with respect to the May 19, 2010, request the city waived any claim under section 552.108 for the GPS ankle monitor information for April 16 through 19, 2010. Consequently, the requested information taken from the named individual's GPS ankle monitoring device from April 16 through 20, 2010, must be released in its entirety. However, because the city complied with section 552.301 of the Government Code with respect to the requests seeking the submitted surveillance video recordings, we will consider your claimed exceptions to disclosure of these recordings.

Next, although the requestors seek surveillance video recordings from Hastings and Toby's Bar, you have only submitted recordings from Hastings. We assume to the extent surveillance video recordings from Toby's Bar existed when the city received the request for information, you have released them to the requestors. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted surveillance video recordings relate to a pending criminal investigation by the city's police department (the "department"). You also provide a letter from the chief of the department stating release of the surveillance video recordings at this time would interfere with the detection, investigation, and prosecution of crime. Although the requestors argue no investigation is currently pending due to the death of the primary suspect, you state the department is actively investigating other potential criminal actors in connection with this incident. Thus, based on your representations and our review, we determine release of the submitted surveillance video recordings at this time 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), *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).

Accordingly, the city may withhold these recordings in their entirety under section 552.108(a)(1) of the Government Code.[1]

In summary, the city must release the requested information taken from the named individual's GPS ankle monitoring device from April 16 through 20, 2010. The city may withhold the submitted Hastings surveillance video recordings under section 552.108(a)(1) of the Government Code.

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,

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 386260

Enc. Submitted documents

cc: 2 Requestors
(w/o enclosures)

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[1]As our ruling is dispositive, we need not address your remaining argument against disclosure.