



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2010

Mr. David M. Douglas  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2010-15656

Dear Mr. Douglas:

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# 398334.

The City of Austin (the "city") received a request for a report of all the police cars of a specified year that had spare tires removed from them and the work orders that account for the removal of the spare tires. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is not responsive to the instant request because it consists of work orders pertaining to earlier models of police cars and purchase orders not requested. Additionally, you acknowledge the submitted police report is not responsive. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

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<sup>1</sup>We assume the "representative sample" of information 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 those submitted to this office.

We note some of the information at issue is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(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). Some of the responsive information consists of "Work Order Cost Detail" documents which are subject to section 552.022(a)(3). 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 responsive "Work Order Cost Detail" documents subject to section 552.022 under section 552.108.

We now address your argument under section 552.108 of the Government Code for the remaining responsive information. 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You indicate the Austin Police Department objects to disclosure of the information at issue because its release would interfere with a pending criminal investigation. Based on your representations, we conclude the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code. *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).

In summary, the city must release the responsive “Work Order Cost Detail” documents pursuant to section 552.022(a)(3) of the Government Code. The city may withhold the remaining responsive information 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/eb

Ref: ID# 398334

Enc. Submitted documents

c: Requestor  
(w/o enclosures)