



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2011

Lieutenant Dän Dennis
Forest Hill Police Department
3336 Horton Road
Forest Hill, Texas 76119

OR2011-02714

Dear Lieutenant Dennis:

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# 409722.

The City of Forest Hill (the "city") received a request for (1) a sexual harassment complaint filed by a named city official against a named city council member and (2) a letter to the mayor, signed by three named city council members, calling a special council meeting. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹

You acknowledge "[t]he request asks for additional documents not in the possession of the Forest Hill Police Department." You state "[t]hat portion of the request has been referred to the appropriate [c]ity department." We note the submitted information does not include the requested letter to the mayor. We also note this request for the letter was sent to the city, rather than the police department, and we have received no additional briefing or responsive documents from the city. We therefore assume the city has released any other information that is responsive to this request, to the extent the city maintained any such information when

¹To the extent the submitted information consists of representative samples, this letter ruling assumes the submitted information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

it received the request. If not, then the city must release any such information immediately.² See Gov't Code §§ 552.006, .221, .301(a), .302; Open Records Decision No. 664 (2000).

We next note the scope of this request for information is otherwise confined to a specified complaint of alleged sexual harassment. Thus, the rest of the information you have submitted is not responsive to this request. This decision does not address the public availability of the submitted information that is not responsive to this request, and the city need not release that information in response to the request.

You seek to withhold the responsive complaint under section 552.108 of the Government Code. We understand you to claim section 552.108(a)(1), which 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). You also cite to section 552.108(a)(2), which excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). As a general rule, section 552.108(a)(1) and section 552.108(a)(2) apply to two mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with the detection, investigation, or prosecution of crime. Section 552.108(a)(2) is applicable to information relating to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the responsive complaint is related to an open criminal investigation. Based on your representation, we conclude the city may withhold the 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) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

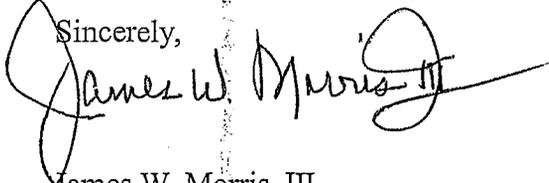
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 409722

Enc: Submitted documents

c: Requestor
(w/o enclosures)