



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2011

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7BN
Dallas, Texas 75201

OR2011-14880

Dear Mr. Ernst:

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# 432944.

The City of Dallas (the "city") received a request for invoices, shipping labels, receipts, receipt confirmations, delivery orders and other documentation pertaining to the city's receipt of multi-band mobile or portable subscriber radios for public safety from Motorola or Wai-Wize over a specified time period. You state the city does not have the requested shipping labels.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have received comments from the United States Department of Justice (the "DOJ"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note portions of the submitted information are made expressly public under section 552.022 of the Government Code, which 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

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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). In this instance, portions of the submitted information, which we have marked, consist of invoices and receipts that pertain to the expenditure of funds by the city. This information is subject to section 552.022(a)(3). Although you assert the information we have marked is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision Nos. 665 at 2 n. 5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the information we have marked may not be withheld under section 552.108. However, we note that portions of the information we have marked are excepted from disclosure under section 552.136 of the Government Code.² Because section 552.136 is other law for purposes of section 552.022, we will address the applicability of this exception to the marked information. We will also address your argument under section 552.108 for the remaining information, which is not subject to section 552.022.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, 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); *see id.* § 552.136(b) (defining "access device"). Accordingly, the city must withhold the bank account number, bank routing number, and customer account numbers we have marked pursuant to section 552.136 of the Government Code.

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: (1) 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). Where an

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the pending case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information.

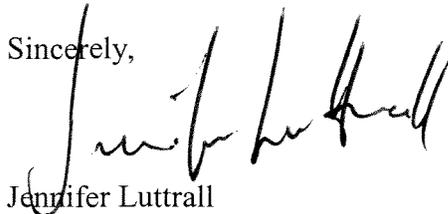
You represent, and the DOJ states in its letter to this office, the DOJ objects to the release of the information at issue under section 552.108(a)(1) because the information relates to a pending criminal investigation the DOJ is conducting, and release of this information would interfere or prejudice this ongoing investigation. Based on the DOJ's representations and our review, we determine the release of the information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code on behalf of the DOJ.

In summary, the city must withhold the information we have marked under section 552.136 of the Government Code. The remaining information subject to section 552.022(a)(3) of the Government Code must be released. The city may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code on behalf of the DOJ.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 432944

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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