



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2011

Ms. Kathryn H. Davis
City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2011-15281

Dear Ms. Davis:

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# 433857 (#W006127).

The City of Killeen (the “city”) received a request for information related to a claim the requestor filed against the city. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]” unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made of, for, or by the city. Therefore, the city must release the submitted information pursuant to section 552.022(a)(1) unless it is expressly confidential under other law or excepted from disclosure under section 552.108. You do not claim section 552.108. Although you seek to withhold the submitted information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022(a)(1). Therefore, the city may not withhold any of the submitted information under section 552.103 of the Government Code. We note some of the submitted information falls within the scope of section 552.137 of the

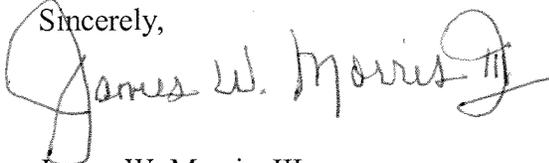
Government Code, which is other law that makes information confidential for purposes of section 552.022(a)(1).¹ Accordingly, we will address section 552.137.

Section 552.137 of the Government Code states “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an internet website address, or an e-mail address a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that do not fall within the scope of section 552.137(c). The city must withhold the marked e-mail addresses under section 552.137 of the Government Code unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.² The city must release the rest of the submitted information pursuant to section 552.022(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,



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

JWM/em

¹This office will raise section 552.137 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

Ref: ID# 433857

Enc: Submitted documents

c: Requestor
(w/o enclosures)