



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2011

Ms. Natalie Banuelos
Attorney for City of Murphy
Messer, Campbell & Brady, L.L.P.
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2011-16361

Dear Ms. Banuelos:

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# 435496.

The City of Murphy (the "city"), which you represent, received five requests for information from the same requestor. The first, second, and fifth requests seek information regarding a specified incident. The third requests the minutes of a specified meeting. The fourth requests information regarding any disciplinary action taken against the officer involved in the specified incident. You state the requested meeting minutes do not exist.¹ You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and reviewed the submitted information, a portion of which is a representative sample.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹The Act does not require a governmental body to release information that did not exist when it received a request or to 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).

²We assume the "representative sample" of records 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 that submitted to this office.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless it is excepted by section 552.108 of the Government Code or expressly confidential under “other law.” Gov’t Code § 552.022(a)(1). In this instance, the submitted information consists of a completed incident report and a completed internal investigation into the incident. We note you do not raise section 552.108. Although you raise section 552.103 of the Government Code, this is a discretionary exception to disclosure that protects only 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 section 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 the purposes of section 552.022(a)(1), and the city may not withhold the requested information under this section. As no additional exceptions to disclosure are raised for the requested information, it must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 435496

Enc. Submitted documents

c: Requestor
(w/o enclosures)