



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2012

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

OR2012-13430

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# 462937.

The City of Dallas (the "city") received ten requests from the same requestor for information related to (1) certain calendars; (2) the exclusion of Wai-Wize in "the suggested MWBE subs for the latest radio" request for proposals ("RFP"); (3) all purchase orders from Motorola Solutions, Inc. ("Motorola") for radios during a specified time period; (4) all written correspondence between certain named individuals; (5) all notes, reports, and records maintained by certain individuals regarding any meetings with Motorola; (6) all notes, reports, and records maintained by certain individuals regarding any meetings with a named individual; (7) all contracts, agreements, and related records regarding Motorola's agreement with Lazo Technologies ("Lazo") and the supply of radios to the city; (8) all contracts, agreements, and related records regarding Motorola's or Lazo's agreement with any entity to sell software or firmware updates for radios supplied to the city; (9) Motorola's submitted proposal in response to RFP No. BHZ1212; and (10) the cost of three specified types of radios. You claim the submitted information is excepted from disclosure pursuant to sections 552.108, 552.117, and 552.137 of the Government Code. In addition, you state release of the requested information may implicate the proprietary interests of Motorola. Accordingly, you state, and provide documentation showing, you have notified Motorola of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the United States Department of Justice (the "DOJ") and the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you state a portion of the submitted information is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

We note some of the responsive information consists of grant agreements subject to section 552.022(a)(3) of the Government Code, which provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless it is "made confidential under [the Act] or other law[.]" *Id.* § 552.022(a). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception that may be waived and does not make information confidential under the Act. See *id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the submitted grant agreements may not be withheld under section 552.108. As you raise no other exception to disclosure of this information, the city must release the submitted grant agreements to the requestor. However, we will address your argument under section 552.108 of the Government Code for the responsive information that is not subject to section 552.022(a)(3).

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 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 governmental body has custody of information relating to a 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

¹We 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 that those records contain substantially different types of information than that submitted to this office.

withheld. In its comments to this office, the DOJ objects to release of the remaining responsive information because its release would interfere with the DOJ's pending criminal investigation. Based upon this representation, we conclude 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 remaining responsive information under section 552.108(a)(1) of the Government Code.²

In summary, the city must release the grant agreements we have marked 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, 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 Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 462937

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

c: **Mr. Walt M. Junker**
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