



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 17, 2014

Mr. Grant Jordan  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2014-12416

Dear Mr. Jordan:

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# 529325 (CFW PIR No. W033476).

The City of Fort Worth (the "city") received a request for regulatory files maintained by the city's Public Works Department (the "department") pertaining to Billmark Plating Company, Inc. ("Billmark") from a specified period of time. You state you are releasing some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from an interested party. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the interested party's assertion the information at issue is made public by the federal Clean Water Act. *See* 33 U.S.C. §§ 1251 *et seq.* Specifically, the interested party asserts the information relates to the administration of federal pretreatment programs and is subject to release under section 1318(b) of title 33 of the United States Code. Section 1318 describes the duties of the Administrator of the United States Environmental Protection Agency (the "administrator") or his authorized representative to determine whether any person is in violation of any effluent limitation or pretreatment standard. *See id.* § 1318(a). This section states the administrator shall require the owner or operator of any point source to sample effluents, make reports, and provide other information as the

---

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

administrator reasonably requires. *See id.* § 1318(a)(A); *see also* 40 C.F.R. § 401.11(d) (defining “point source” as any discernible, confined and discrete conveyance from which pollutants are discharged). Section 1318(b) states, except for trade secrets, any records obtained from the owner or operator of any point source pursuant to section 1318 shall be available to the public. *See* 33 U.S.C. § 1318(b).

Pursuant to section 552.303(c) of the Government Code, this office asked the city to provide us with additional information regarding the applicability of section 1318(b) to the information at issue. *See* Gov’t Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). The city informs our office the records at issue do not fall under the provisions of the Clean Water Act because the records were not created in conjunction with a regulatory or pretreatment program; the city did not require Billmark to provide any of the records or reports to the city, and the city did not obtain the information at issue from Billmark. Instead, the city states the records were created in the course of the city’s routine maintenance and inspection of the city’s sanitary sewer lines, a subsequent investigation into the source of pollutants discovered during the routine testing, and the resulting investigation into possible criminal conduct conducted in cooperation with the Environmental Protection Agency (the “EPA”). Accordingly, because the information at issue was not obtained from or created by the owner or operator of a point source pursuant to section 1318, the information is not subject to release under section 1318(b) of title 33 of the United States Code, and we address the city’s arguments against disclosure of the submitted information.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) 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); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. The department is not a law enforcement agency. This office has determined, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency (1) demonstrates that the information relates to the pending case and (2) provides this office with a representation from the law enforcement agency that the law enforcement agency wishes to withhold the information. You state, and provide a letter confirming, the Criminal Investigative Division of the EPA objects to release of the submitted information because it relates to the EPA’s open criminal investigation. Based on

this representation, we conclude the release of the submitted information 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). Thus, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/bhf

Ref: ID# 529325

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Carrick Brooke-Davison  
Guida, Slavcic & Flores  
816 Congress Avenue, Suite 1500  
Austin, Texas 78701  
(w/o enclosures)

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.