



August 20, 2002

Mr. Brad Norton  
Assistant City Attorney  
City of Austin - Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2002-4625

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167377.

The City of Austin (the "city") received a request for the requestor's employee files. You advise that you are releasing some responsive information. You claim that the remaining requested information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

As an initial matter, we note that the submitted documents include information that was generated after the city received the request for information. Chapter 552 of the Government Code does not require a governmental body to make available information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986); Open Records Decision No. 362 (1983) (document not within purview of chapter 552 if not in existence at time of request). Nor does the Public Information Act require a governmental body to inform a requestor if the requested information comes into existence after the request is made. Open Records Decision No. 452 at 8.

The city received the present request on June 3, 2002; thus, information that was not in existence on that day is not responsive to the request. Because a portion of the submitted information did not exist at the time the city received the request, we conclude that the city need not release this information to the requestor and we do not address it in this ruling.

We now address your claims under sections 552.107 and 552.108 for the remaining information. Section 552.107(1) protects information encompassed by the attorney-client privilege. We note that in instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences

made to the attorney. *See* Open Records Decision No. 574 (1990). Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *See id.* at 5.

You represent that the submitted e-mail messages and questionnaires and counsel notes from interviews constitute confidential communications between city attorneys conducting an investigation for the city, and between those attorneys and the head of the city Law Department. You indicate that this information relates to the investigation, which was conducted by attorneys specializing in employment law for the purpose of rendering legal advice to the city in relation to the possible discipline or termination of a city employee. Based on your representations and our review of the submitted information, we conclude that some of this information is covered by the attorney-client privilege, and is therefore excepted from disclosure under section 552.107(1). *See Harlandale Independent School District v. Cornyn*, 25 S.W.3d 328 (Tex. App.--Austin 2000). We have marked the information that you may withhold under this exception.

You claim that the submitted police report is excepted under section 552.108. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication . . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication . . . .

Gov't Code §§ 552.108(a)(2), (b)(2). The city is neither a law enforcement agency nor a prosecutor. However, this exception may be asserted by a custodian of records on behalf of another governmental body which is a law enforcement agency or prosecutor. *See, e.g.,* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident). You indicate that the submitted police report is a record of the city police department that relates to an

investigation that has not resulted in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Upon review of the information you provided, we find you have not shown that the information at issue pertains to a case that concluded in a final result other than conviction or deferred adjudication. Therefore, you may not withhold any information under section 552.108.

However, certain license plate numbers contained within the submitted police report are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked Texas license plate numbers that the city must withhold under section 552.130. We note that the submitted report contains additional license plate and driver's license numbers that are generally excepted under section 552.130. However, this information pertains to the requestor. Section 552.130 protects the privacy of the individual to whom the information relates. Pursuant to section 552.023, the requestor has a special right of access to his own information that is normally protected under section 552.130. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect person's privacy). Therefore, you may not withhold such information under section 552.130, and it must be released.

In summary, you may withhold the information that we have marked pursuant to section 552.107. You must withhold the license plate numbers we have marked under section 552.130. You must release the remaining submitted information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 167377

Enc. Submitted documents

c: Mr. Yalcin Karadag  
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Austin, Texas 78705  
(w/o enclosures)