



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2005

Mr. William P. Chesser  
City Attorney  
City of Brownwood  
P.O. Box 1389  
Brownwood, Texas 76804

OR2005-09207

Dear Mr. Chesser:

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# 234089.

The City of Brownwood (the "city") received a request for 19 categories of information, including information relating to a city computer system. You have submitted information that you claim is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You also believe that the submitted information implicates the proprietary interests of Spillman Computer Technologies, Inc. ("Spillman"). You notified Spillman of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exceptions you claim and have reviewed the submitted information. We assume that the city has released any other information that is responsive to this request, to the extent that such information existed when the city received this request.<sup>2</sup> If not, then any such

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<sup>1</sup>As of the date of this decision, this office has received no correspondence from Spillman.

<sup>2</sup>We note that the Act does not require the city to release information that did not exist when it received this request or 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

information must be released immediately. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information is related to a pending criminal prosecution. You also state that the district attorney's office has asked that the submitted information be withheld from disclosure. We note that section 552.108 may be invoked by any proper custodian of information relating to an incident involving allegedly criminal conduct that is still under active investigation or prosecution. *See* Open Records Decision No. 372 at 4 (1983) (addressing statutory predecessor to Gov't Code § 552.108). Therefore, based on your representations, we conclude that the city may withhold the submitted information on behalf of the district attorney under section 552.108(a)(1) of the Government Code.<sup>3</sup> *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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

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(1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>As we are able to make this determination, we do not address your claim under section 552.103.

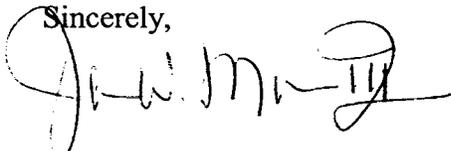
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



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

JWM/sdk

Ref: ID# 234089

Enc: Submitted documents

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