



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2009

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-11828

Dear Ms. Valkavich:

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# 353029 (COSA File No. 09-0698).

The City of San Antonio (the "city") received a request for Animal Care Services ("ACS") reports and information pertaining to any interactions between ACS and two specified puppy businesses. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that portions of the submitted information are subject to section 552.022 of the Government Code, which provides in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

....

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). Accordingly, the city may withhold the information we have marked under sections 552.022(a)(3) and 552.022(a)(17) only if such information is

“expressly confidential under other law.” You claim the documents we have marked under section 552.022 are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body’s interests and is, therefore, not “other law” for purposes of section 552.022(a)(3) or section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the information we have marked as subject to section 552.022, under section 552.108 of the Government Code. As no further exceptions against its disclosure are raised, the city must release this information to the requestor.

Section 552.108 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). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim section 552.108 protects records in its possession. If an administrative agency’s investigation reveals possible criminal conduct the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov’t Code 552.108(a)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 at 1, 474 (1987), 372 at 4 (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 that relates to incident).

You state the submitted investigation documents pertain to an animal cruelty investigation conducted by the city’s ACS investigators involving, among other things, possible violations of city code and penal code provisions. You explain that one of the functions of ACS is the investigation of criminal offenses against animals. You further state ACS intends to refer criminal prosecution of these violations to the Municipal Prosecutor’s Office, as well as the Office of the District Attorney. Based on these representations and our review, 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), *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).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be

basic information). Accordingly, with the exception of basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the city must release the information we have marked that is subject to section 552.022 of the Government Code. With the exception of basic information, which must be released, the city may withhold the remaining 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 at (512) 475-2497.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 353029

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining claim against disclosure of portions of the submitted information.