



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2012

Ms. Margaret Ward
Shotts, Trevino & Guevara LLP
Counsel for the City of Burkburnett
2237 Hillside Drive
San Angelo, Texas 76904

OR2012-08610

Dear Ms. Ward:

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# 456242.

The City of Burkburnett (the "city"), which you represent, received two requests from two different requestors for certain information pertaining to violations of city skate park ordinances.¹ The first requestor seeks five categories of information pertaining to violations of city skate park ordinances, while the second requestor seeks (1) all records pertaining to a specified incident; (2) dispatch logs for a specified day; and (3) any records of citations issued at the city skate park. You state that some of the requested information does not exist.² You further state you have released (1) some of the requested information to the first

¹We note the first request was received on March 26, 2012, while the second request was received on March 27, 2012.

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic 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 (1990), 452 at 3 (1986), 362 at 2 (1983).

requestor and (2) basic information for the specified incident report to the second requestor.³ You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code.⁴ We have considered the exception you claim and reviewed the submitted information.

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 must reasonably explain how and why section 552.108 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 state that the submitted video recording and information you have marked in the incident report are related to a pending criminal prosecution. Based on your representations, we find that 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). Thus, the city may withhold the submitted video recording and the information you have marked in the incident report under section 552.108(a)(1). As you claim no other exceptions for the remaining information in the incident report, it must be released to the second requestor.⁵

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,

³We assume that the basic information you have released is the basic information referred to under section 552.108(c) of the Government Code. *See* Gov’t Code § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

⁴Although you raise section 552.101 of the Government Code, you provide no arguments to support this claim. *See* Gov’t Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested). Accordingly, we do not address your assertion of section 552.101 for the submitted information.

⁵We note that because the second requestor has a right of access to some of the information being released, the city must again seek a ruling from this office if the city receives another request for this information from an individual other than the second requestor.

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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive, flowing style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/eb

Ref: ID# 456242

Enc. Submitted documents

c: Requestor
(w/o enclosures)