



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2012

Ms. Rebecca Brewer
Counsel for the Town of Prosper
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2012-13324

Dear Ms. Brewer:

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# 463176.

The Town of Prosper (the "town"), which you represent, received requests from two requestors at the same law firm for information related to two named individuals, a specified address, records retention policies, and public information requests.¹ You state the town has made some of the requested information available to the requestors, but claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹You inform us one of the requesters initially sent his requests for information to a private law firm that represents the town, but that law firm is neither the town's officer for public information nor that person's designee. See Gov't Code § 552.301(a), (c). However, you also explain the law firm forwarded the requests to the town's officer for public information.

²Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990) (predecessor statute). Furthermore, although you claim some of the submitted information is protected under the attorney-client privilege based on Texas Rule of Evidence 503, we note section 552.107(1) of the Government Code is the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code. See Open Records Decision No. 676 at 3.

Initially, you inform us some of the responsive information was previously the subject of prior requests for information, in response to which this office issued Open Records Letter Nos. 2012-03207 (2012), 2012-05864 (2012), and 2012-11057 (2012). In Open Records Letter Nos. 2012-03207 and 2012-05864, we determined with the exception of basic information, the town may withhold the submitted information under section 552.108 of the Government Code. In Open Records Letter No. 2012-11057, we determined the town may withhold or release some of the requested information in accordance with Open Records Letter Nos. 2012-03207 and 2012-05864; must withhold some of the information under sections 552.107(2) and 552.130 of the Government Code; and must release the remaining responsive information to the requestors. We have no indication the law, facts, and circumstances on which our prior rulings were based have changed. Accordingly, the town must continue to rely on Open Records Letter Nos. 2012-03207, 2012-05864, and 2012-11057 as previous determinations and withhold or release the information we previously ruled on in accordance with those prior rulings.³ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Because the remaining information is not encompassed by the previous decisions, we will address your arguments to withhold it from release.

You assert the town is prohibited from releasing the remaining information at issue pursuant to a protective order. Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). You have submitted a copy of a protective order signed by the presiding judge for the District Court of the 366th Judicial District, Collin County, Texas, in the case styled *In the Matter of the Marriage of D.S. and P.S. and in the Interest of S.S., S.S. and S.S., Children*, Cause No. 366-562612011. The court order provides in pertinent part, until further order of the court, the following information is protected from disclosure: all town incident reports and 9-1-1 tapes/digital recordings involving a named individual; all town correspondence, vehicle communications and dashboard camera video footage regarding a named individual; and any cellular telephone memory cards retrieved from the residence of the named individual and subsequently put into evidence. You state the remaining information is subject to this order. Upon review, we find the remaining information is subject to the protective order. Accordingly, the town must withhold the remaining information under section 552.107(2) of the Government Code.⁴

In summary, the town must continue to rely on Open Records Letter Nos. 2012-03207, 2012-05864, and 2012-11057 as previous determinations and withhold or release the submitted

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

⁴As our ruling is dispositive, we do not address your other argument to withhold this information.

information we previously ruled on in accordance with those prior rulings. The town must withhold the remaining information under section 552.107(2) 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, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 463176

Enc. Submitted documents

c: Requestor
(w/o enclosures)