



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2013

Mr. Monty Akers  
Akers & Boulware-Wells, L.L.P.  
6618 Sitio Del Rio Boulevard, Building E, Suite 102  
Austin, Texas 78730

OR2012-00293

Dear Mr. Akers:

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# 476129.

The City of Whitney (the "city"), which you represent, received a request for twenty-one categories of information related to the city's volunteer fire department (the "department"), the position of department fire chief, a named department fire chief, and the Lake Whitney Medical Center, including bank account statements during a specified time period, documents showing the city paid money for a specified tile and welder, documents concerning claims for reimbursement for specified equipment, documents showing the department is a division of the city, documents indicating payments from the city to the department during a specified time period, documents indicating payments by the city to purchase or maintain specified equipment during a specified time period, and a specified affidavit. You state some of the requested information is being released. You further state the city has no information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

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

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(1), (3), (5). The submitted information contains completed reports that are subject to subsection 552.022(a)(1) and that must be released unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* § 552.022(a)(1). The submitted information also contains information in accounts, contracts, invoices, and receipts that are subject to subsection 552.022(a)(3) and budget documents that are subject to subsection 552.022(a)(5), which must be released unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(3), (5). You seek to withhold the information subject to subsections 552.022(a)(1), 552.022(a)(3), and 552.022(a)(5) under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, no portion of the information subject to subsection 552.022(a)(1), subsection 552.022(a)(3), or subsection 552.022(a)(5) may be withheld under section 552.103 of the Government Code. Additionally, section 552.108 is also a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5, 663 at 5, 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Accordingly,, none of the information subject to

subsections 552.022(a)(3) and 552.022(a)(5) may be withheld under section 552.108 of the Government Code. Because information subject to subsection 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under that exception for the information subject to subsection 552.022(a)(1). Further, as sections 552.130 and 552.136 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions for the information at issue.<sup>3</sup> We will also consider your arguments under sections 552.103 and 552.108 for the information not subject to section 552.022.

You claim section 552.108 of the Government Code for the information not subject to subsections 552.022(a)(3) and 552.022(a)(5). Section 552.108(a)(1) 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 claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a pending prosecution. Based upon your representation, we conclude release of the information at issue will 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). Accordingly, we find the city may withhold the information not subject to subsections 552.022(a)(3) and 552.022(a)(5) of the Government Code under section 552.108(a)(1) of the Government Code.<sup>4</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code § 552.130*. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b);

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the information at issue.

*see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the bank account, routing, and partial credit card numbers we have marked under section 552.136 of the Government Code.

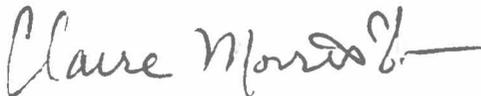
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may withhold the information not subject to subsections 552.022(a)(3) and 552.022(a)(5) under section 552.108(a)(1) of the Government Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code and the bank account, routing, and credit card numbers we marked under section 552.136 of the Government Code. The city must release the remaining information subject to subsections 552.022(a)(3) and 552.022(a)(5) of the Government Code, which we marked; however, any information that is subject to copyright may be released only in accordance with copyright law.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 476129

Enc. Submitted documents

c: Requestor  
(w/o enclosures)