



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2013

Ms. Alexis G. Allen
Counsel for the City of Red Oak
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza, 500 North Akard Street
Dallas, Texas 75201

OR2013-00438

Dear Ms. Alexis G. Allen:

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# 475693.

The City of Red Oak (the "city"), which you represent, received a request for communications between three named individuals, a named law firm, or a specified trust and the city's police department, the city attorney, or any city official, call sheets from a specified address from January 2012 to the date of the request, and code enforcement records for all complaints for a specified address from July 1, 2012 to October 16, 2012. You state you do not have information responsive to a portion of the request.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us the city requested clarification of a portion of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). We understand the city has not received a response to its request for clarification. Accordingly, the city has no obligation at this time

¹The 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).

to release any information that might be responsive to this portion of the request. However, if the city receives clarification and wishes to withhold any of the information encompassed by the clarified request, you must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Next, we note the submitted information contains documents filed with a court, which are subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the court-filed documents may not be withheld under section 552.108. As you raise no further exceptions against disclosure of the court-filed documents, the city must release the court-filed documents pursuant to section 552.022(a)(17) of the Government Code.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Based on your representations and our review, we find the city may withhold the remaining information, which we have marked, under section 552.108(a)(2) of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', written over a faint, illegible typed name.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 475693

Enc. Submitted documents

c: Requestor
(w/o enclosures)