



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2013

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2013-11929

Dear Mr. Alcorn:

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# 492954.

The City of Grand Prairie (the "city") received a request for six categories of information concerning a specified shooting incident. You state you have released some of the requested information to the requestor. You state you do not maintain information responsive to a portion of the request.¹ You claim the instant request is not a request to the city under the Act. In the alternative, you claim the requested information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address the city's claim the instant request was not a request to the city under the Act. This office has held a written communication that reasonably can be judged to be a request for public information constitutes a request for information under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). In this regard, we note that a request for information need not refer to the Act or be addressed to the officer for public information. ORDs 497 at 3, 44 at 2. In this case, the request was addressed to the city, received by the city, and seeks information in the city's "custody and/or control[.]" Further, we note the request specifically directs the city to timely deliver any documents or written communications in its possession to the requestor. Thus, we find the instant request to be

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

a valid information request under the Act to the city, and we will address your arguments against disclosure.

Next, we note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-07174 (2013). In that ruling, we determined the city must withhold the information we marked under section 552.130 of the Government Code and release the remaining information. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, the city must rely on Open Records Letter No. 2013-07174 as a previous determination and release the information at issue, which we have marked, in accordance with that ruling.² *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 that information is or is not excepted from disclosure). However, we will address your arguments for the remaining responsive information, which is not subject to Open Records Letter No. 2013-07174.

We must now address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You did not submit a copy of the requested internal affairs report for our review because you state this report was not complete at the time of the request. We note that the requestor did not limit his request to a completed internal affairs report, and thus, the internal affairs report maintained by the city was responsive to the request. Consequently, we find the city failed to comply with the requirements of section 552.301 with regards to this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342,350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although the city raises a mandatory exception to disclosure,

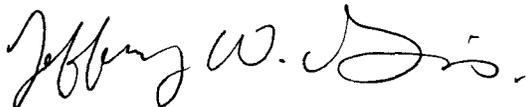
²As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

because you have not submitted the additional responsive information for our review, we have no basis for finding any of this information confidential by law. Although the city also claims an exception to disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. Open Records Decision Nos. 665 at n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure in appropriate circumstances). Accordingly, the responsive information at issue may not be withheld under section 552.108 of the Government Code. Thus, we have no choice but to order the responsive internal affairs report released in accordance with section 552.302 of the Government Code. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you believe the information at issue is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 492954

Enc. Submitted documents

c: Requestor
(w/o enclosures)