



February 2, 2015

Ms. Heather Silver  
Assistant City Attorney  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2015-02032

Dear Ms. Silver:

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# 552157.

The City of Dallas (the "city") received a request for information relating to a specified investigation. The city states it has released some of the requested information. The city claims the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the city did not comply with the procedural requirements of the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *Id.* § 552.301(b). Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a

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<sup>1</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.

decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public.

The requestor informs our office he submitted a request for information to the city on November 4, 2014. In response to this request, the city released certain information to the requestor, but did not seek a ruling from our office to withhold any information. The city states, and submits documentation demonstrating, it subsequently received the instant request for information on November 10, 2014, in response to which the city requested a ruling from our office. However, we understand the requestor to assert the information at issue in the instant ruling was responsive to the November 4, 2014, request. The requestor thus argues the city violated section 552.301 by not seeking a decision concerning the information at issue in the instant request in response to the November 4, 2014, request. We note a governmental body must make a good-faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). The city states it did not consider the information at issue in the instant request to be responsive to the requestor's November 4, 2014, request. Whether any of the submitted information was responsive to the November 4, 2014, request is a question of fact. We note this office is unable to resolve disputes of fact in the open records ruling process. Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, based on the city's representations and the information provided to this office, we conclude the city made a good-faith effort to respond to the November 4, 2014, request.

Additionally, the requestor contends he was not timely notified of the city's request for a ruling from this office as required by section 552.301(d) of the Government Code. We note November 11, 2014, was a holiday. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. The city does not inform us it was closed for business on any of the remaining days at issue. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was November 25, 2014. The city submitted the request for a ruling by electronic submission on November 20, 2014. *See* Gov't Code § 552.309(a) (requirement to submit information within specified period under the Act is met in timely fashion if it is submitted through attorney general's designated electronic filing system within that period). The request for a ruling indicates the requestor was copied on the correspondence. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city complied with the procedural requirements mandated by subsections 552.301(b) and (d) of the Government Code. Accordingly, we will address the city's arguments against disclosure of the submitted information.

Next, 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, the following:

(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[.]

*Id.* § 552.022(a)(1). The submitted information includes a completed report that is subject to section 552.022(a)(1). The city must release the completed report pursuant to section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although the city raises section 552.116 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions).* Therefore, the city may not withhold the completed report, which we have marked, under section 552.116. However, we will address the city's arguments against disclosure of the remaining information.

Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The city states the remaining information consists of audit working papers concerning a complaint received by the city auditor's office in accordance with its fraud, waste and abuse policy. The city informs us the audit was conducted pursuant to city council resolution number 98-0751, as well as section 3 of chapter IX of the city charter, administrative direction 2-14, and the city auditor's 2014 annual audit plan. Based on the city's representations and our review, we agree the information at issue constitutes audit working papers under section 552.116. Thus, the city may generally withhold the remaining information under section 552.116 of the Government Code.

We note the requestor, as the individual who submitted the complaint at issue, asserts a right of access to the information at issue. Section 552.023 provides, in pertinent part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

...

(e) Access to information under this section shall be provided in the manner prescribed by Sections 552.229 and 552.307.

*Id.* § 552.023(a), (b), (e). Under section 552.023, a person has a special right of access to information that is excepted from public disclosure under laws intended to protect the person's own privacy interest as the subject of the information. *See id.* §§ 552.023, .229 (concerning consent for release of information under section 552.023), .307 (relating to release of information under section 552.023). However, the submitted information is excepted under section 552.116, and not by a law intended to protect an individual's privacy interests. Thus, the requestor does not have a right of access to this information. Therefore,

the city may withhold the remaining information under section 552.116 of the Government Code.

In summary, the city must release the information we have marked pursuant to section 552.022(a)(1) of the Government Code. The city may withhold the remaining information under section 552.116 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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 552157

Enc. Submitted documents

c: Requestor  
(w/o enclosures)