



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2015

Mr. Timothy B. Kirwin
Counsel for the City of Hardin
Randel Law Office Ltd., L.L.P.
820 Gessner, Suite 1570
Houston, Texas 77024

OR2015-11715

Dear Mr. Kirwin:

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# 567539.

The City of Hardin (the "city"), which you represent, received a request for (1) a copy of a specified return receipt requested for a specified letter dated March 4, 2015, signed by the requestor; (2) a copy of the specified letter sent to the requestor; and (3) a specified video related to the requestor. You state you have released the second category of information to the requestor. You state you do not have information responsive to the first category of the request.¹ You claim 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, we note, and you acknowledge, the city did not comply with section 552.301 of the Government Code. Section 552.301 of the Government Code prescribes the procedures a

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). Likewise, a governmental body is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. *See Gov't Code* § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

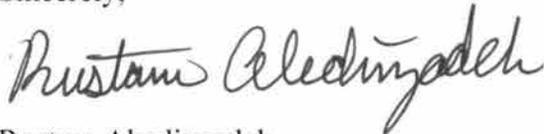
governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code §§ 552.301(b), (e). A governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released unless the governmental body overcome this presumption by demonstrating a compelling reason to withhold the information. *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure which protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the interest under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You have provided documentation showing the Texas Commission on Environmental Quality (the "TCEQ") asserts an interest in the submitted information. Therefore, we will consider whether the city may withhold this information under section 552.108 on behalf of the TCEQ.

Section 552.108(a)(1) 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 . . . 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 the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the TCEQ states the information at issue relates to a pending criminal investigation by TCEQ's Environmental Crimes Unit and release of the information may negatively affect the investigation's outcome. This office has previously determined that the Environmental Crimes Unit of the TCEQ is a law enforcement agency for purposes of section 552.108. Based on this representation and our review, we conclude the release of the submitted information would 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the TCEQ.

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,

A handwritten signature in black ink that reads "Rustam Abedinzadeh". The signature is written in a cursive style with a large initial 'R'.

Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 567539

Enc. Submitted documents

c: Requestor
(w/o enclosures)