



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2017

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2017-00802

Dear Ms. Pate:

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# 641082 (City PIR No. W056011).

The Fort Worth Police Department (the "department") received a request for nine categories of information pertaining to social media access software and network investigative software during a specified time period, including specified types of communications.¹ You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.111 of the Government Code. You also state release of the submitted information may implicate the interests of DigitalStakeout, Inc. ("DigitalStakeout"). Accordingly, you notified DigitalStakeout of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

explain applicability of exception in certain circumstances). We have received comments from DigitalStakeout. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us the requestor was required to make a deposit for payment of anticipated costs for records relating to the specified types of communications. *See* Gov't Code § 552.263(a) (governmental body may require deposit or bond for payment of anticipated costs in certain instances if governmental body provides requestor with written itemized statement). You state the department has not received the required deposit. Therefore, the department is not required to release any responsive information for which it has not received the required deposit. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered received on date governmental body receives deposit or bond); *see also id.* § 552.263(f) (requestor who fails to make a deposit or post a bond required under subsection (a) before the 10th business day after the date the deposit or bond is required is considered to have withdrawn the request for the copy of the public information that precipitated the requirement of the deposit or bond). However, if the department timely receives the required deposit, the department must seek a ruling from this office before withholding any responsive information.

Next, you state Exhibit C-2 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-28305 (2016). In Open Records Letter No. 2016-28305, we concluded, in pertinent part, the department may withhold the information at issue under section 552.108(b)(1) of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the department may continue to rely on Open Records Letter No. 2016-28305 as a previous determination and withhold Exhibit C-2 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 information is or is not excepted from disclosure). As no further exceptions to disclosure have been raised, the department must release the remaining information.

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 we are able to make this determination, we need not address the arguments against disclosure of this information.

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, appearing to read "Kenny Moreland", written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 641082

Enc. Submitted documents

c: Requestor
(w/o enclosures)