



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2011

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2011-19246

Dear Mr. Scott:

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# 440691.

The City of Conroe (the "city") received a request for a specified 9-1-1 recording and arrest report. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted the requested 9-1-1 recording. To the extent the specified arrest report existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We note that the submitted information was at issue in a previous ruling issued by this office, Open Records Letter No. 2011-14059 (2011). In that ruling, we concluded that the city must withhold the 9-1-1 recording under section 552.130 of the Government Code unless the requestor had a right of access to the information pursuant to section 552.023, in which case the information must be released. Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public,

unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See id.* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the city may not withhold the submitted information if it was previously released in response to the prior request, unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.108 of the Government Code for the submitted information, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not now withhold the submitted information, if it was previously released to the prior requestor, under section 552.108 of the Government Code.

In the event the submitted information was released, we must address whether any of the submitted information must now be withheld. The submitted information contains information that is subject to section 552.130 of the Government Code, which is a mandatory exception that cannot be waived. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the submitted 9-1-1 recording contains a license plate number at 00:30. Accordingly, the city must withhold the license plate number at 00:30 under section 552.130. However, no portion of the remainder of the recording contains information subject to 552.130. Thus, no portion of the remaining information may be withheld under section 552.130.

To the extent the submitted information was not released in response to the prior request, we will consider your argument under section 552.108 of the Government Code. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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. You state the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable and to the extent the submitted information has not previously been released, the submitted information may be withheld on that basis.

In summary, to the extent the city previously released the 9-1-1 recording in response to the prior request, the city must withhold the license plate number at 00:30 under section 552.130 of the Government Code. In that instance, the remainder of the recording must be released. To the extent the 9-1-1 recording was not released, the 9-1-1 recording may be withheld under section 552.108(a)(2) 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.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, reading "Kathryn R. Mattingly". The signature is written in a cursive style with a large, looping "y" at the end.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/sdk

Ref: ID# 440691

Enc. Submitted documents

c: Requestor
(w/o enclosures)