



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2012

Mr. Charles Philips
Special Council
Town of Prosper
2301 Virginia Parkway
McKinney, Texas 75071

Ms. Rebecca Brewer
Abernathy Roeder Boyd & Joplin P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2012-11057

Dear Mr. Philips and Ms. Brewer:

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# 459108 (Town of Prosper PIR 2012-52-82; 84; 87-88; 90; 93; 97; 118).

The Town of Prosper (the "town") received thirty-eight requests from twenty-five different requestors for various information pertaining to two named individuals and a specified address, including information related to specified incidents in April; records pertaining to legal advice provided to the town or the town's police department regarding the two named individuals or the incidents in April; and the status of charges filed against one of the named individuals. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us some of the responsive information was previously the subject of prior requests for information, in response to which this office issued Open Records Letter Nos. 2012-03207 (2012) and 2012-05864 (2012). In these rulings, we determined with the exception of basic information, the town may withhold the submitted information under

section 552.108 of the Government Code. We have no indication the law, facts, and circumstances on which our prior rulings were based have changed. Accordingly, to the extent the responsive information is identical to the information previously requested and ruled upon by this office in those prior rulings, the town may continue to rely on those rulings as previous determinations. *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). To the extent the information in the current requests are not encompassed by the previous rulings, we will address your arguments.

Next, we note some of the submitted information is not responsive to the instant requests because it does not pertain to the incidents, address, or the named individuals at issue. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the requests and the town is not required to release non-responsive information in response to the requests.

A portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in part:

(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[.]

Gov't Code § 552.022(a)(1). Incident report number 11005848 and offense report numbers 03-0388, 06-02350, 06-02459, and 07-03215 are completed reports that are subject to section 552.022(a)(1) of the Government Code. The town must release this information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. You raise section 552.107(2) of the Government Code for this information. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the town may not withhold the information at issue under section 552.107(2). We note, the documents at issue contain information subject to section 552.130 of the

Government Code, which makes information confidential under the Act.¹ Additionally, we will consider your arguments against disclosure of the information not subject to section 552.022 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Accordingly, the town must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

You assert the town is prohibited from releasing the remaining information at issue pursuant to a protective order. As noted above, section 552.107(2) of the Government Code provides that information is excepted from disclosure if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). You have submitted a copy of a protective order signed by the presiding judge for the District Court of the 366th Judicial District, Collin County, Texas, in the case styled *In the Matter of the Marriage of D.S. and P.S. and in the Interest of S.S., S.S. and S.S., Children*, Cause No. 366-562612011. The court order provides in pertinent part, until further order of the court, the following information is protected from disclosure: all town incident reports and 9-1-1 tapes/digital recordings involving a named individual; all town correspondence, vehicle communications and dashboard camera video footage regarding a named individual; and any cellular telephone memory cards retrieved from the residence of the named individual and subsequently put into evidence. You state the information at issue is subject to this order. Upon review, we find the information not subject to section 552.022, which we have marked, is subject to the protective order. Accordingly, the town must withhold the marked information under section 552.107(2) of the Government Code.²

In summary, the town may continue to rely on Open Records Letter Nos. 2012-03207 and 2012-05864 as previous determinations and withhold or release the information we previously ruled on in accordance with those prior rulings. The town must withhold the information we have marked under sections 552.107(2) and 552.130 of the Government Code. The remaining information must be released.³

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

³We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 459108

Enc. Submitted documents

c: Requestor
(w/o enclosures)