



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2012

Ms. Donna L. Johnson
Counsel for The Hempstead Police Department
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2012-13273

Dear Ms. Johnson:

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# 462898; (City of Hempstead# COH12-002(A)).

The Hempstead Police Department (the "department"), which you represent, received a request for all records pertaining to the death of a named individual. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-10141 (2012). In this ruling, we concluded the department must withhold: (1) the medical records we marked under section 552.101 of the Government Code in conjunction with the Medical Practice Act, (2) the information we marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), (3) the criminal history record information we marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code, (4) the information we marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, (5) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (6) the information we marked, the license plate

numbers in the photograph labeled "100_8503", and the video recordings on the submitted compact disc labeled "111/115 In Car" under section 552.130 of the Government Code. We also concluded the department may withhold the social security numbers we marked and the video recording on the submitted compact disc labeled "Audio/Video Alicia Ashton 6/9/10" under section 552.147 of the Government Code. Finally, we concluded the remaining information must be released.

You now seek to withhold the requested information under sections 552.103 and 552.108 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential by law. Sections 552.103 and 552.108 do not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive Gov't Code § 552.108). Accordingly, any portion of the submitted information that was released in accordance with Open Records Letter No. 2012-10141 may not now be withheld under section 552.103 or section 552.108. As we have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-10141 was based have changed, the department must continue to rely on Open Records Letter No. 2012-01924 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, 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 that information is or is not excepted from disclosure).

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, appearing to read 'NK', with a horizontal line extending to the right.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 462898

Enc. Submitted documents

c: Requestor