



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2013

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-18171

Dear Mr. Batoon:

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# 503180 (ORR# 13-1026-3221).

The El Paso Police Department (the "department") received a request for information pertaining to police report number 12-048198 involving two named individuals. You state the department has released some of the requested information. 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 some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant 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:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains court-filed documents that are subject to subsection 552.022(a)(17), which must be released unless they are made confidential under the Act or other law. *See id.* You seek to withhold the information subject to subsection 552.022(a)(17) under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver).* Therefore, the marked court-filed documents may not be withheld under section 552.108 of the Government Code. As you claim no other exception to the disclosure of the marked court-filed documents, they must be released.

Next, we note the remaining information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-14196 (2013). In that ruling, we determined with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the department may rely on Open Records Letter No. 2013-14196 as a previous determination and withhold or release the remaining information in accordance with that ruling. *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 that information is or is not excepted from disclosure).*

In summary, the department must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. The department may rely on Open Records Letter No. 2013-14196 as a previous determination and withhold or release the remaining information in accordance with that ruling.

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, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 503180

Enc. Submitted documents

c: Requestor
(w/o enclosures)