



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2014

Mr. Jeffrey T. Ulmann
Assistant City Attorney for City of Lago Vista
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2014-15458

Dear Mr. Ulmann:

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# 534930.

The City of Lago Vista (the "city"), which you represent, received a request for any complaints or incident reports from two specified complainants and all e-mails between a specified individual and employees of the city's police department. 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 not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the city need not release it in response to this request.

Next, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2014-08347 (2014), this office ruled the city must release the requested information pursuant to section 552.302 of the Government Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2014-08347 as a previous determination, and release the previously ruled upon information in accordance with it. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from

disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exception you raise.

We note the information in Exhibit B indicates it may have been previously released. 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). Whether the information at issue was previously released to the public is a question of fact that this office cannot resolve through the open records ruling process. *See* Open Records Decisions Nos. 554 (1990), 552 (1990). Therefore, we must rule conditionally. Although you raise section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, to the extent the city has previously released any of the information at issue, the city has waived its claims under section 552.108 and may not withhold it on that basis. However, to the extent the information at issue has not been previously released, we will address the city's claim under section 552.108 of the Government Code.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in Exhibit B relates to an open case that is still being investigated. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the information in Exhibit B would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree that section 552.108(a)(1) is applicable to the information in Exhibit B.

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 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 information in Exhibit A relates to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the information in Exhibit A.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public in *Houston Chronicle*). Thus, with the exception of the basic information, you may withhold the information in Exhibit B under section 552.108(a)(1) of the Government Code, and you may withhold the information in Exhibit A under section 552.108(a)(2) of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2014-08347 as a previous determination, and release the previously ruled upon information in accordance with it. To the extent the city has previously released any of the information in Exhibit B, the city must release the previously released information. To the extent the submitted information is not subject to Open Records Letter No. 2014-08347 and to the extent the information in Exhibit B has not been previously released, the city may, with the exception of basic information, withhold the information in Exhibit B under section 552.108(a)(1) of the Government Code and the information in Exhibit A 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.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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 534930

Enc. Submitted documents

c: Requestor
(w/o enclosures)