



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2014

Ms. Erin A. Higginbotham
Counsel for El Paso Police Department
Denton, Navarro, Rocha, Bernal, Hyde & Zech, PC
2500 West William Cannon, Suite 609
Austin, Texas 78745

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-20127

Dear Ms. Higginbotham and Mr. Ortiz:

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# 542099.

The El Paso Police Department (the "department"), which you represent, received a request for multiple categories of information pertaining to a specified death. You state you will redact certain motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the

Government Code.¹ You claim the requested information is excepted from disclosure under sections 552.102, 552.103, 552.107, 552.108, 552.1175, and 552.119 of the Government Code and privileged under Texas Rule of Evidence 503.² We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, we note some of the requested information was the subject of a previous ruling from this office. In Open Records Letter No. 2014-08084 (2014), this office ruled the responsive information must be 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). Accordingly, pursuant to section 552.007, the department may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although you seek to withhold this information under sections 552.103, 552.107, and 552.108 of the Government Code, as well as under rule 503, these exceptions and this rule 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 section 552.103); Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) and Texas Rule of Evidence 503 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Thus, the department may not withhold this information

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 a decision from this office. *See id.* § 552.147(b).

²We note, although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022. Although you also raise Federal Rule of Evidence 501 and Texas Rule of Civil Procedure 192.5, you make no arguments to support these rules. Therefore, we assume you have withdrawn your claim that these rules apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

on any of these bases. However, as sections 552.102 and 552.1175 do make information confidential under the Act, we will address your arguments under these sections for the requested information previously ordered released in Open Records Letter No. 2014-08084.

Next, we note the remaining requested 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:

(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). The remaining requested information is part of a completed investigation subject to subsection 552.022(a)(1). The department must release this information pursuant to subsection 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. *See id.* You seek to withhold the information subject to subsection 552.022(a)(1) under sections 552.103 and 552.107 of the Government Code, as well as under Texas Rule of Evidence 503. However, sections 552.103 and 552.107 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. *See Dallas Area Rapid Transit*, 4 S.W.3d 469, 475-76; Open Records Decision Nos. 676 at 6 (section 552.107 is not other law for purposes of section 552.022), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* ORD 665 at 2 n.5. Therefore, the department may not withhold the information subject to subsection 552.022(a)(1) under section 552.103 or section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your arguments under section 552.108 of the Government Code and Texas Rule of Evidence 503 for the information that is subject to subsection 552.022(a)(1). Further, because sections 552.102, 552.1175, and 552.119 of the Government Code can make information confidential under the Act, we will address the applicability of those sections to the information subject to subsection 552.022(a)(1).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in 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. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You claim the requested information not subject to Open Records Letter No. 2014-08084 pertains to a criminal investigation that concluded

in a final result other than conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.⁴

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find none of the information previously ordered released in Open Records Letter No. 2014-08084 is excepted under section 552.102(a). Accordingly, the department may not withhold any of it on that ground.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. Upon review, we find section 552.1175 is not applicable any of the remaining information at issue. Therefore, the department may not withhold any of it on that ground.

In summary, with the exception of basic information, the department may withhold the requested information not subject to Open Records Letter No. 2014-08084 under section 552.108(a)(2) of the Government Code. The department must release the remaining information, including the information previously released in Open Records Letter No. 2014-08084.

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.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 'Meredith L. Coffman', with a long, sweeping flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 542099

Enc. Submitted documents

c: Requestor
(w/o enclosures)