



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2016

Ms. Stacie S. White
Counsel for City of Euless
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2016-19399

Dear Ms. White:

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# 624207.

The Euless Police Department (the "department"), which you represent, received a request for all information pertaining to a specified incident. You state the department will redact certain information pursuant to section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009), in addition to social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of seeking a decision from the attorney general. *See* ORD 684. 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* Gov't Code § 552.147(b).

Initially, we note the information at issue was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2015-09590 (2015). In that ruling, we determined 1) with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code; 2) with the exception of the basic information and the information subject to section 552.022 of the Government Code, which must be released, the department may withhold the information it indicated under section 552.108(a)(1) of the Government Code; and 3) to the extent the department previously released the submitted dash camera video footage, the department must release the previously released dash camera video recordings pursuant to section 552.007 of the Government Code but must withhold the recording it indicated in its entirety under section 552.1175 of the Government Code if the individual whose information is at issue elected to restrict access to his information in accordance with section 552.1175(b).

You seek to withhold, under section 552.108 of the Government Code, information which we previously determined the department must release. We note the Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). 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. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, the department may not now withhold under section 552.108 the information we previously ordered released.

With the exception of the information we determined the department may withhold under section 552.108(a)(1) of the Government Code in Open Records Letter No. 2015-09590, there is no indication the law, facts, and circumstances on which Open Records Letter No. 2015-09590 was based have changed. Accordingly, with the exception of the information we determined the department may withhold under section 552.108(a)(1) of the Government Code in Open Records Letter No. 2015-09590, the department must continue to rely on Open Records Letter No. 2015-09590 as a previous determination and withhold or release the identical information in accordance with that ruling.² *See* Open Records

²As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

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). While you previously represented the information at issue related to an open investigation subject to section 552.108(a)(1) of the Government Code, you now inform us the investigation is concluded and claim section 552.108(a)(2) of the Government Code. Thus, for the information we determined the department may withhold under section 552.108(a)(1) of the Government Code, we find the circumstances have changed and the department may not rely on Open Records Letter No. 2015-09590 as a previous determination in this instance. Accordingly, we will consider your argument under section 552.108(a)(2) of the Government Code for this information, as well as the submitted information that was not at issue in the previous ruling.

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. *See* 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.*; *see also id.* § 552.301(e)(1)(A). You state the information at issue pertains to a case which was no-billed by a grand jury and thus, concluded in an outcome other than conviction or deferred adjudication. Based on your representations, we find the department may withhold the remaining information from disclosure under section 552.108(a)(2).

In summary, other than the information we determined the department may withhold under section 552.108(a)(1) of the Government Code in Open Records Letter No. 2015-09590, the department must continue to rely on Open Records Letter No. 2015-09590 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. The department may withhold the remaining information from disclosure under section 552.108(a)(2) of the Government Code.³

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/>

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

[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 that reads "Cole Hutchison". The signature is written in a cursive style with a large, prominent "C" and "H".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 624207

Enc. Submitted documents

c: Requestor
(w/o enclosures)