



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2016

Mr. Phillip J. Smith
Assistant District Attorney
Civil Division
Smith County
100 North Broadway, 4th Floor
Tyler, Texas 75702

OR2016-21335

Dear Mr. Smith:

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# 633066.

The Smith County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from an interested third party. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

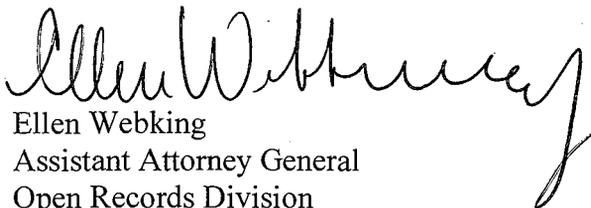
You acknowledge the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-18485 (2016). In Open Records Letter No. 2016-18485, we ruled the district attorney's office: (1) must withhold the polygraph information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (2) must withhold the photographs we marked under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*; (3) must withhold all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (4) must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (5) must release the remaining information. 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* 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 district attorney's office may not now withhold any information we previously ordered to be released unless its release is expressly prohibited by law or the information is confidential under law. Although the district attorney's office claims the information previously ordered released is excepted from disclosure under section 552.103 of the Government Code, this section does 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); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the district attorney's office may not now withhold information this office previously ordered to be released under section 552.103. Furthermore, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. We therefore conclude the district attorney's office must continue to rely on Open Records Letter No. 2016-18485 as a previous determination and withhold or release the submitted information in accordance with that decision. *See* Open Records Decision No. 673 at 6-7 (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).

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,


Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 633066

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)