



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2016

Mr. John A. Haislet
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2016-24488

Dear Mr. Haislet:

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# 634358 (ORR# A16-001214).

The College Station Police Department (the "department") received a request for information pertaining to a specified incident. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-14902 (2016). In Open Records Letter No. 2016-14902, we determined the department must release a court-filed document pursuant to section 552.022(a)(17) of the Government Code and basic information, but may withhold the remaining information under section 552.108(a)(1) of the Government Code. 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). Thus, pursuant to section 552.007, the department may not now withhold the information that was previously released, unless its release is expressly prohibited by law or the

information is confidential by law. Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests. *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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103 and 552.108 neither prohibit public disclosure of information, nor make information confidential under law. Accordingly, pursuant to section 552.007, the department may not now withhold the court-filed document and information that it previously released in accordance with Open Records Letter No. 2016-14902 but, instead, must release this information to the requestor. However, we find the facts and circumstances on which the prior ruling was based have changed in regard to the remaining information. Accordingly, the department may not rely on that ruling as a previous determination and withhold or release the identical information in accordance with it. *See* Open Records Decision No. 673 (2001). Therefore, we will address the department's arguments to withhold the remaining information.

Next, the department informs us the requested information is part of a completed investigation. Section 552.022(a)(1) of the Government Code reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the 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). Thus, the remaining information is subject to section 552.022(a)(1). As discussed above, section 552.103 is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORD 542 at 4. Therefore, the department may not withhold the remaining information under section 552.103. Nevertheless, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the department's arguments for that section.

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 information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states the remaining

information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 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 Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which we note the department has already released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.

To conclude, the department must provide to the requestor the court-filed document and basic information that it previously released in accordance with Open Records Letter No. 2016-14902. The department may withhold the remaining information 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 634358

Enc. Submitted documents

c: Requestor
(w/o enclosures)