



February 13, 2015

Mr. Christopher Gregg
Assistant City Attorney for the City of Webster
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2015-02974

Dear Mr. Gregg:

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# 553569.

The Webster Police Department (the "department"), which you represent, received a request for 1) information pertaining to use of force incidents during a specified time period, 2) a specified use of force incident report, and 3) information pertaining to a named officer. You state you have released some information to the requestor. 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 the requestor asks the department to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the department has made a good-faith effort to do so.

Next, we note some of the submitted information, which we have marked, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-02207 (2015). In that previous ruling, we concluded the City of Webster

must release the submitted information. 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). You seek to withhold, under section 552.108 of the Government Code, the information at issue which we previously determined had to be released. 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 this information under section 552.108. As you raise no further exceptions to disclosure for this information, the department must release this information. However, we will consider your argument under section 552.108 of the Government Code for the remaining information that has not been previously released.

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 state the remaining information pertains to criminal cases that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the remaining information.

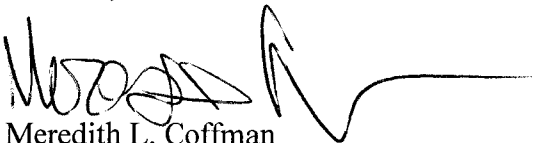
However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 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 remaining information under section 552.108(a)(2) of the Government Code.

In summary, the department must release the information previously released pursuant to Open Records Letter No. 2015-02207. With the exception of basic information, 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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 553569

Enc. Submitted documents

c: Requestor
(w/o enclosures)