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ATTORNEY GENERAL OF TEXAS

August 26, 2015

Ms. Aimee Alcorn
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-17788

Dear Ms. Alcorn:

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# 577641 (CCPD File No. THen15).

The Corpus Christi Police Department (the "department") received a request for all information relating to a specified incident. The department claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the department claims and reviewed the submitted information, a portion of which consists of a representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-14368 (2015). In Open Records Letter No. 2015-14368, we determined the department may not withhold any of the information at issue under section 552.103 of the Government Code because it did not comply with section 552.301 of the Government Code. We then determined the

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

department must withhold certain information under (1) section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) section 552.101 of the Government Code in conjunction with common-law privacy; and (3) section 552.130 of the Government Code, but must release the remaining information. We note the department again raises section 552.103 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 under law. *See id.* § 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 any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the department raises 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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the department may not now withhold the submitted information under section 552.103.

We note the submitted information contains information relating to the requestor's client, which, in the previous ruling, was withheld under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. We note, as an authorized representative, the instant requestor has a right of access to the information relating to his client under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, we find the circumstances have changed with respect to the information to which the current requestor has a right of access under section 552.023. Therefore, the department may not rely on Open Records Letter No. 2015-14368 as a previous determination with respect to the information at issue and must release it pursuant to section 552.023. *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 information is or is not excepted from disclosure). Nevertheless, we have no indication the law, facts, or circumstances on which the prior ruling was based have changed with respect to the remaining information. Accordingly, the department must continue to rely on Open Records Letter No. 2015-14368 as a previous determination and withhold or release the remaining information in accordance with that ruling. *See id.*

In summary, pursuant to section 552.023 of the Government Code, the department must release the information relating to the requestor's client which was previously withheld in Open Records Letter No. 2015-14368 under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The department must continue to rely on Open Records Letter No. 2015-14368 as a previous determination and withhold or release the remaining information in accordance with that ruling.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 577641

Enc. Submitted documents

c: Requestor
(w/o enclosures)