



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2017

Mr. Thomas Gilliland
Media Relations
Harris County Sheriff's Office
1200 Baker Street
Houston, Texas 77002

OR2017-00759

Dear Mr. Gilliland:

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# 641404 (HCSO Reference No. 14SO700555).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. 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 representative sample of information.¹

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-02115 (2015). In Open Records Letter No. 2015-02115, we concluded the sheriff's office must (1) withhold certain information under section 552.130 of the Government Code, and (2) release the remaining information. To the extent the submitted information is identical to the information previously requested and ruled upon by this office

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

in the prior ruling, the sheriff's office must continue to rely on that ruling as a previous determination and withhold or release the submitted information in accordance with that ruling. *See* Open Records 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). However, you now seek to withhold the submitted information under section 552.108 of the Government Code. We note section 552.007 of the Government Code provides that, 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* 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). Accordingly, pursuant to section 552.007, to the extent the information we previously ruled that you must release is identical to the submitted information, the sheriff's office may not now withhold the previously released information unless its release is expressly prohibited by law. Because section 552.108 does not prohibit the release of information or make information confidential, the sheriff's office may not now withhold any previously released information under this exception. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Thus, the sheriff's office may not now withhold any of the previously released information under section 552.108. However, we will address your argument under section 552.108 for any submitted information not subject to the prior ruling.

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. *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.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic 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 you state you have released, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, for the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office must continue to rely on Open Records Letter No. 2015-02115 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of basic information, the sheriff's office 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 641404

Enc. Submitted documents

c: Requestor
(w/o enclosures)