



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2017

Ms. Katie Leininger
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2017-05861

Dear Ms. Leininger:

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# 649639.

The Pearland Police Department (the "department") received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of information.¹

Initially, 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. 2016-24868 (2016). In that ruling, we determined, with the exception of basic information, which we ordered released, the department may withhold the submitted 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 under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also*

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.

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. You seek to withhold portions of the previously released information in the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person; thus, the informer's privilege, unlike other claims under section 552.101 of the Government Code, neither prohibits release nor makes information confidential. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the department may not now withhold any portion of the previously released information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Furthermore, you previously represented the information at issue related to an open investigation subject to section 552.108(a)(1) of the Government Code. You now inform us the investigation is concluded and claim section 552.108(a)(2) of the Government Code. Thus, we find the circumstances have changed and the department may not rely on Open Records Letter No. 2016-24868 as a previous determination, in this instance. However, we will consider your remaining arguments against disclosure of the submitted information.

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.

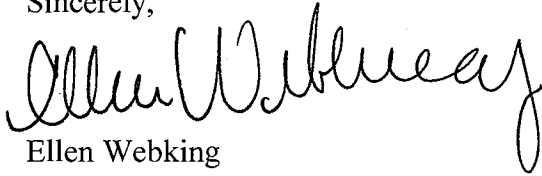
However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston* 531 S.W.2d 177 (Tex. Civ. App.—Houston [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). We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, which you state you have released, the department may withhold the submitted

information not previously released in Open Records Letter No. 2016-24868 under section 552.108(a)(2) of the Government Code.²

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# 649639

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.