



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2018

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law & Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2018-01440

Dear Ms. Buendia:

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# 697048 (ORR# D002289).

The Dallas Police Department (the "department") received a request for incident number 024016-2017. The department states it will release some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, the department states the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-08971 (2017). In that ruling, we determined the department may withhold the information it marked under section 552.108(a)(1) of the Government Code, must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy, must withhold the motor vehicle record information it marked under section 552.130 of the Government Code, and must release the remaining information. The department states there has been no change in the law, facts, or circumstances on which the previous ruling was based with respect to the information previously withheld under section 552.108(a)(1) of the Government Code. Thus, to the extent the submitted information was previously marked and withheld under section 552.108(a)(1) of the

Government Code, the department may rely on Open Records Letter No. 2017-08971 as a previous determination and withhold the identical 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 that information is or is not excepted from disclosure).

However, in this instance, the department informs us the requestor is the authorized representative of an individual whose information was previously withheld under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. *See* Gov't Code § 552.023(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). The requestor has a right of access to information pertaining to his client that would otherwise be confidential under common-law privacy and section 552.130 of the Government Code. Thus, we find the facts and circumstances have changed with respect to the requestor’s client’s information, and the department may not rely on Open Records Letter No. 2017-08971 with respect to such information. Accordingly, the department may not withhold such information from this requestor under section 552.101 on the basis of common-law privacy or section 552.130, but must release it to this requestor pursuant to section 552.023 of the Government Code.

The department now seeks to withhold additional information under section 552.108 of the Government Code. Section 552.007 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). Accordingly, pursuant to section 552.007, the department may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. Section 552.108 does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Accordingly, the department may not now withhold under section 552.108 any portion of the submitted information that was previously released.

In summary, to the extent the submitted information was previously marked and withheld under section 552.108(a)(1) of the Government Code, the department may rely on Open Records Letter No. 2017-08971 as a previous determination and withhold the identical information in accordance with that ruling. The department must release the remaining information to this requestor.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 697048

Enc. Submitted documents

c: Requestor
(w/o enclosures)