



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2019

Ms. Ileana Fernandez
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2019-07691

Dear Ms. Fernandez:

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# 755442.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified arrest. We understand the department is withholding some of the requested information in accordance with section 552.130(c) and 552.147(b) of the Government Code and Open Records Letter No. 2015-24970 (2015).¹ The department states it will release some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Letter No. 2015-24970 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

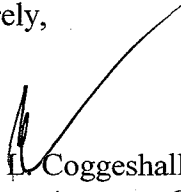
The requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-00018 (2019). In Open Records Letter No. 2019-00018, we determined the department must withhold some of the submitted information section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, but release the remaining information. 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 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, HISD 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 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Bos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not expressly prohibit the release of the submitted information or make the information confidential. Accordingly, the department may not withhold any of the submitted information under section 552.108 of the Government Code. As noted in part above, the department indicates it is now withholding information pertaining to the individual whose information was at issue in that ruling in accordance with section 552.130(c) and 552.147(b) of the Government Code and Open Records Letter No. 2015-24970 (2015). *See generally* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the department must withhold or release the remaining information in accordance with in accordance with Open Records Letter No. 2019-00018. *See* ORD 673 (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).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 755442

Enc. Submitted documents

c: Requestor
(w/o enclosures)