



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2019

Ms. Alicia K. Kreh  
Counsel for the City of Weatherford  
Taylor Olson Adkins Sralla Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2019-10571

Dear Ms. Kreh:

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# 760822 (Ref. No. W001282-012719).

The City of Weatherford (the "city"), which you represent, received a request for all information related to a specified incident. You state the city will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Section 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 without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684.

Initially, we note the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-10059 (2016). In that ruling, we concluded the city's police department: (1) need not release the submitted body worn camera recordings because they were not properly requested pursuant to chapter 1701 of the Occupations Code; (2) must withhold certain information under section 552.101 of the Government Code in conjunction with the Medical Practice Act, subtitle B of title 3 of the Occupations Code; (3) must withhold certain information under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure; (4) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) must release the remaining information. You now seek to withhold the submitted information under sections 552.101 and 552.108 of the Government Code. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision No. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any previously released information under section 552.108 of the Government Code. However, as section 552.101 of the Government Code makes information confidential under the Act, we will consider the applicability of this section for the information at issue. Furthermore, we have no indication the law, facts, or circumstances on which the previous ruling was based have changed with respect to the remaining information at issue in Open Records Letter No. 2016-10059. Accordingly, for any information previously requested and ruled upon by this office, we conclude the city must rely on Open Records Letter No. 2016-10059 as a previous determination and withhold or release the information previously at issue in accordance with that ruling.

Next, we note the submitted information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that with the exception of any portion of the custodial death report the Office of the Attorney General ("OAG") determines is privileged, the OAG shall make the report public. *See* Crim. Proc. Code art. 49.18(b). Although you claim the submitted custodial death report is excepted from disclosure under section 552.108 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the city must release the submitted custodial death

report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

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 relates to a closed case 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 information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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 the basic information does not include dates of birth. *See* ORD 127 at 3-4. Thus, to the extent the remaining information was not previously released, then with the exception of the basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

In summary, with the respect to any information previously requested and ruled upon by this office, we conclude the city must rely on Open Records Letter No. 2016-10059 as a previous determination and withhold or release the information previously at issue in accordance with that ruling. To the extent the submitted information was not previously released, then with the exception of the submitted custodial death report, which we have marked, and the basic information, which must be released, the city may withhold the submitted 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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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](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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized flourish above the first name.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/mo

Ref: ID# 760822

Enc. Submitted documents

c: Requestor  
(w/o enclosures)