



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2019

Mr. Ryan Brooke
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2019-18688

Dear Mr. Brooke:

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# 774222 (ORR# 2418).

The City of Lubbock (the "city") received a request for a specified incident report. The city claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims.

Initially, we note the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-12685 (2019). In that ruling, we determined the city may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; and with the exception of the search warrant, which must be released pursuant to section 552.022(a)(17) of the Government Code, and the basic information, which must be released, the city 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 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). Thus, pursuant to section 552.007, the city may not now withhold the information that was previously released unless such release is expressly prohibited by law or the information is confidential by law. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Accordingly, pursuant to section 552.007, the city may not now withhold under section 552.108 the information it previously released pursuant to Open Records Letter No. 2019-12685. However, we find the facts and circumstances on which the prior ruling was based have changed in regard to the remaining information. Accordingly, the city may not rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001). Therefore, we will address the city's argument against disclosure of the remaining 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). The city states the requested information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the remaining 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). 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). Thus, with the exception of the basic information, the city may generally withhold the remaining information under section 552.108(a)(2) of the Government Code.

We note the requestor is a representative of the Child Protective Services division of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code allows, among other things, for DFPS to obtain criminal history record information ("CHRI") concerning an individual who is the subject of a report of abuse or neglect of a child. *See* Gov't Code § 411.114(a)(4), (a)(2)(I). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2).

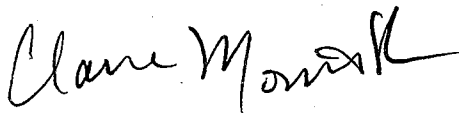
In this instance, the requestor does not state whether the individual who is the subject of the requested information is a suspect in a report of abuse or neglect of a child. Therefore, we are unable to determine whether section 411.114 of the Government Code gives the requestor a right of access to the CHRI, and we must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). Accordingly, if the individual to whom the requested information pertains is a suspect in a report of abuse or neglect of a child, then the city must release CHRI to this requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, except for the basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the individual who is the subject of the information is not a suspect in a report of abuse or neglect of a child, then except for the basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the city must release the search warrant that was previously released in accordance with Open Records Letter No. 2019-12685. With the exception of the basic information, which must also again be released, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code; however, if the individual to whom the requested information pertains is a suspect in a report of abuse or neglect of a child, then the city must also release CHRI 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/gw

Ref: ID# 774222

c: Requestor