



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2019

Mr. Brian Sears
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2019-24407

Dear Mr. Sears:

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# 780705 (ORR# 19-2237).

The Texas Department of Public Safety (the "department") received a request for the final report related to a specified investigation. The department claims the submitted information is excepted from disclosure under sections 552.103 and 552.107(2) of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Initially, we note the department has redacted portions of the submitted information. We understand the department has redacted dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2015-27249 (2015).¹ We further understand the department has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² However, the department has also redacted

¹Open Records Letter No. 2015-27249 authorized the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

²Section 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

other information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). We have no indication the department has been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); *see also* Open Records Decision 673 (2000). As such, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we are unable to discern the nature of the remaining redacted information. Consequently, the department has failed to comply with section 552.301 of the Government Code as to this information, and this information is presumed public under section 552.302 of the Government Code. Accordingly, the department must release the redacted information pursuant to section 552.302 of the Government Code.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). We note in her request for information, the requestor sought the final report pertaining to a specified investigation. In response, the department notified the requestor that the department had located records responsive to her request. Accordingly, we find the submitted information consists of completed reports that are subject to section 552.022(a)(1). The department must release the completed reports pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* The department seeks to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the department may not withhold the submitted information under section 552.103 of the Government Code.

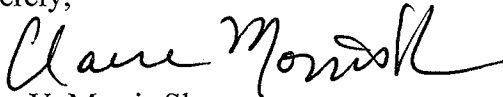
governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

The department also raises section 552.107(2) of the Government Code. Section 552.107(2) allows a governmental body to withhold information if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). The department informs this office it has been involved in litigation pertaining to a particular shooting incident for several years, and has submitted a copy of a protective order signed by the judge in this litigation. The department states, “[t]he Department requests that your office review the submitted records to determine what information, if any, must ... be withheld from disclosure pursuant to this order,” and the department has submitted for our review a copy of the order at issue. Upon review of the submitted order, we determine the order does not prohibit release of the submitted information in response to this request for information under the Act. Thus, the department may not withhold any portion of the submitted information under section 552.107(2). *See also id.* § 552.022(b) (providing a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law). Therefore, the department must release the submitted information.

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/jxd

Ref: ID# 780705

Enc. Submitted documents

c: Requestor
(w/o enclosures)