



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 8, 2019

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
Post Office Box 9277
Corpus Christi, Texas 78469-9277

OR2019-28270

Dear Mr. Garcia:

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# 791116 (Atif1 and AKar1).

The Corpus Christi Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. You state you will release some information. You state the department will redact information pursuant to section 552.130 of the Government Code and Open Records Letter No. 2016-00831 (2016).¹ You claim the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹ 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). Open Records Letter No. 2016-00831 is a previous determination allowing the city to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision from this office.

² We note although you raise section 552.101 of the Government Code, you make no arguments to support this assertion. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

³ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note most of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-16443 (2019). In that ruling, we determined the following: (1) the department must withhold certain marked information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; (2) with the exception of a certain date of birth marked for release, the department must withhold the public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the department must withhold certain marked motor vehicle record information under section 552.130 of the Government Code; and (4) the department must 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, 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. We note 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). Thus, the department may not now withhold information this office previously ordered to be released under section 552.108. Further, we have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2019-16443 as a previous determination and withhold or release the information previously ruled upon 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We note, however, a portion of the submitted information was created after the date of the department's receipt of the previous request and thus, is not encompassed by the prior ruling. Accordingly, we will consider your argument against disclosure of the information that is not subject to Open Records Letter No. 2019-16443.

Next, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the department received the first request for information on July 10, 2019. Accordingly, the department's ten-business-day deadline was July 24, 2019.

However, you did not request a ruling from this office until July 31, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

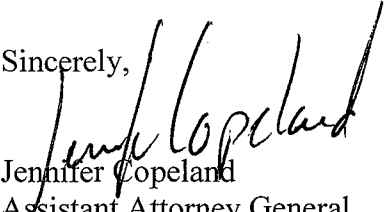
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You claim section 552.108 of the Government Code for the submitted information. We find you failed to establish a compelling reason to address your exception to disclosure.

In summary, the department must continue to rely on Open Records Letter No. 2019-16443 as a previous determination and withhold or release the information previously ruled upon in accordance with that ruling. The department must release the remaining 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 791116

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)