



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2019

Ms. Lisa Hulsey
Assistant General Counsel
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-31469

Dear Ms. Hulsey:

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# 795682 (ORR# 19PIA0653).

The Office of the Harris County Constable, Precinct 5 (the "constable's office") received a request for a specified incident report. The constable's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-21578 (2019). In that ruling, we determined the constable's office must withhold some information under section 552.101 of the Government Code in conjunction with common-law privacy, 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 discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary

exceptions generally). Thus, the constable's office may not withhold any of the submitted information that it previously released but, instead must provide this information to the requestor.

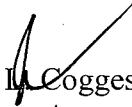
Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The constable's office states the remaining information pertains to a case that concluded in a result other than conviction or deferred adjudication. Thus, the constable's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the constable's office must provide to the requestor the submitted information that it previously released. The constable's office may withhold the remaining 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.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

Ref: ID# 795682

Enc. Submitted documents

c: Requestor
(w/o enclosures)