



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 15, 2019

Mr. Stephen D. Gates  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152, Room 320  
Midland, Texas 79702-1152

OR2019-32237

Dear Mr. Gates:

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# 796987 (Reference #M027658-082419).

The City of Midland (the "city") received a request for information pertaining to a specified incident involving a named individual. You state the city has released some information. 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.

Initially, you inform us the information submitted as Exhibits B and C was the subject of previous request for information, in response to which this office issued Open Records Letter No. 2019-03970 (2019). In that ruling, we determined (1) the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with Public Law number 112-55; (2) the city may withhold the firearm serial numbers we marked in the remaining information under section 552.108(b)(1) of the Government Code; (3) the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; (4) the city must withhold all living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) the city must release the remaining information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, the city must continue to rely on Open Records Letter No. 2019-03970 as a previous determination and withhold or release the information in Exhibits B and C in accordance with that ruling.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law,

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<sup>1</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure of the remaining information that is not subject to the prior ruling.

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. 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); Open Records Decision No. 434 (1986). You state Exhibits D and E pertain to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, 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.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” 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). Accordingly, with the exception of basic information, the city may withhold Exhibits D and E under section 552.108(a)(2) of the Government Code.<sup>2</sup>

In summary, the city must continue to rely on Open Records Letter No. 2019-03970 as a previous determination and withhold or release the information in Exhibits B and C in accordance with that ruling. With the exception of basic information, which must be released, the city may withhold Exhibits D and E under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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

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

<sup>3</sup> We note the information being released includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read 'KH' followed by a stylized flourish.

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/be

Ref: ID# 796987

Enc. Submitted documents

c: Requestor  
(w/o enclosures)