



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2020

Ms. Victoria Womack
Records Clerk
Port Aransas Police Department
City of Port Aransas
705 West Avenue A
Port Aransas, Texas 78336

OR2020-10967

Dear Ms. Womack:

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# 822495.

The Port Aransas Police Department (the "department") received a request for information pertaining to a specified incident. You state the department does not maintain information responsive to a portion of the request.¹ You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1085 of the Government Code. Additionally, you state, and provide documentation showing, the department notified the next of kin of a deceased individual of the right to submit comments to this office explaining why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.² We have also received and considered comments from the requestor. *See id.*

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² 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

Initially, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-14723 (2014). In that ruling, we determined the department must release the submitted information. We note the Act does not permit the selective disclosure of 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 id.* § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *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 information that was previously released unless its release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 663 at 5 (1999) (waiver of discretionary exceptions), 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, to the extent the submitted information was previously released in Open Records Letter No. 2014-14723, the department may not now withhold the information under section 552.108 of the Government Code. However, as sections 552.1085 and 552.130 of the Government Code can make information confidential under the Act, we will consider the applicability of these sections to the information at issue.³ Furthermore, to the extent the department has not released the information at issue, we will address your argument under section 552.108.

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). You indicate the submitted 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 submitted 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*,

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code, to the extent the department did not previously release it.

To the extent any of the submitted information was previously released, we will consider your remaining argument against disclosure. Section 552.1085 of the Government Code provides, in relevant part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). Upon review, we find none of the submitted photographs consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the department may not withhold the submitted photographs under section 552.1085(c) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, *writ ref'd n.r.e.*); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department did not previously release the information at issue, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. To the extent any of the submitted information was previously released, the department must: (1) withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; and (2) 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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/be

Ref: ID# 822495

Enc. Submitted documents

c: Requestor
(w/o enclosures)