



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2022

Ms. Rachelle White
Director of Legal Affairs
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2022-09997

Dear Ms. White:

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# 937025 (OGC No. 1566-12-201).

The Texas Department of Criminal Justice (the "department") received a request for the current version of a specified department policy manual, including specified sections. You state the department is releasing some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2021-27989 (2021). In that ruling, we concluded, in relevant part, the department: (1) must continue to rely on Open Records Letter No. 2016-12430 (2016) as a previous determination and withhold or release the identical information at issue in accordance with that ruling, (2) must withhold certain information under section 552.139(a) of the Government Code, and (3) must release the remaining information. You now seek to withhold the entirety of the information at issue under section 552.108 of the Government Code. We note section 552.007 of the Government Code provides that, 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

¹ 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 those records contain substantially different types of information than that submitted to this office.

information is confidential under 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). Therefore, pursuant to section 552.007, the department may not now withhold the previously released information unless its release is expressly prohibited by law. Because section 552.108 does not prohibit the release of information or make information confidential, the department may not now withhold any portion of the previously released information under section 552.108(b)(1) of the Government Code. *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). Nonetheless, we have no indication the law, facts, and circumstances on which Open Records Letter No. 2021-27989 was based have changed. Accordingly, the department must continue to rely on Open Records Letter No. 2021-27989 as a previous determination and withhold or release the information at issue in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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).

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

² As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

Ms. Rachelle White - Page 3

Ref: ID# 937025

Enc. Submitted documents

c: Requestor
(w/o enclosures)