



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 17, 2022

Ms. Audrey Guthrie
Counsel for the City of Kyle
The Knight Law Firm, L.L.P.
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2022-14159

Dear Ms. Guthrie:

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# 945017 (Ref. No. W010817-020822).

The City of Kyle ("city"), which you represent, received a request for the pseudonym form and incident report from a specified case. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us Exhibit D was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-02581 (2022), and Exhibit E was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-18998 (2021). In Open Records Letter No. 2022-02581, we determined the city must withhold the submitted pseudonym form under section 552.101 of the Government Code in conjunction with article 58.153 of the Code of Criminal Procedure. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the city must rely on Open Records Letter No. 2022-02581 as a previous determination and withhold Exhibit D 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from

disclosure). However, Exhibit E consists of an incident report for a criminal case that we understand has now been dismissed. Thus, we find the relevant facts and circumstances have changed since the issuance of Open Records Letter No. 2021-18998 and the city may not rely upon our previous ruling as a previous determination for this information. *See id.* Therefore, we will address your arguments against disclosure of this information.

Exhibit E consists of a completed report that is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under the Act or “other law.” Gov’t Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the Exhibit E may not be withheld under section 552.103. However, because section 552.1175 of the Government Code makes information confidential under the Act, we will address the applicability of this section to Exhibit E.¹

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. For purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *Cf. id.* § 552.117(c) (“family member” has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175, applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Thus, the city must withhold the information we marked to the extent the individual whose information is at issue elected to restrict access to the information in accordance with section 552.1175(b) of the Government Code.

In summary, the city must rely on Open Records Letter No. 2022-02581 as a previous determination and withhold Exhibit D in accordance with that ruling. The city must withhold the information we marked to the extent the individual whose information is at issue elected to restrict access to the information in accordance with section 552.1175(b) of the Government Code. The remaining information must be released.²

¹ 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).

² We note the requestor has a right of access to some of the information being released. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Thus, if the city

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/jxd

Ref: ID# 945017

Enc. Submitted documents

c: Requestor
(w/o enclosures)

receives another request for the same information from a different requestor, the city must again seek a decision from this office.