



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2014

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2014-08604

Dear Ms. Brooks:

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# 523449.

The City of Midland (the "city") received a request for a specified incident report. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first note the information at issue was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2008-09126 (2008). In requesting the previous ruling, the city did not claim an exception to disclosure under section 552.108 of the Government Code. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at

¹Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise in this instance because the city does not hold the information at issue in an employment capacity.

2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, in previously electing not to claim section 552.108 of the Government Code, the city waived that exception and may not now withhold any of the submitted information under section 552.108.

We also note the previous ruling concluded the city may not withhold any portion of the submitted incident report under section 552.117(a)(2) because that information is not held in an employment capacity. We further found the department must withhold the personal information we marked in the submitted incident report under section 552.1175 if the peace officer at issue elected to restrict access to this information in accordance with section 552.1175(b), and release the remaining information to the requestor. However, you inform us the individual whose information was at issue in the prior ruling is no longer employed by the city. Thus, it is unclear whether the former employee whose information is at issue is currently a licensed peace officer. Accordingly, the law, facts, and circumstances on which Open Records Letter No. 2008-09126 was based may have changed, and the city may not rely on the prior ruling as a previous determination with respect to this information. *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 information is or is not excepted from disclosure). Therefore, we will address your remaining argument against disclosure.

We note portions of the submitted information may be subject to section 552.1175 of the Government Code. This section is applicable to information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. Gov't Code § 552.1175(a). Section 552.1175(b) provides, in part, the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

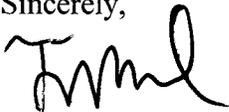
Id. § 552.1175(b). You state the submitted report contains information pertaining to an individual who is no longer employed by the city. Thus, it is unclear whether the former

employee whose information is at issue is currently a licensed peace officer. Upon review, we find the city must withhold the information we have marked under section 552.1175 if the individual to whom this information relates is currently a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b). However, if this individual is no longer a licensed peace officer, or no election is made, the city may not withhold the information we have marked under section 552.1175. As you raise no further exceptions to disclosure, the remaining information must be released.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 523449

Enc. Submitted documents

c: Requestor
(w/o enclosures)