



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-09925

Dear Mr. Ortiz:

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# 525378 (City Case No. 14-1026-4177).

The City of El Paso (the "city") received a request for videos of all interviews of United States Army personnel involved in a specified automotive accident and all site surveys or other information regarding reconstruction of the accident by the city's police department. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

We first note one of the submitted videos, which we have indicated, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-20279 (2012). In that previous ruling, we concluded the city may not withhold any

¹Although you also raise section 552.101 of the Government Code in conjunction with the doctrines of common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. *See* Gov't Code §§ 552.301, .302.

portion of the video at issue under section 552.108 of the Government Code, and must release the video to the requestor. 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). You seek to withhold, under section 552.108 of the Government Code, the video at issue, which we previously determined had to be released. 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 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, the city has waived that exception and may not now withhold the video at issue under section 552.108. As you raise no further exceptions to disclosure for this video, the city must release it. However, we will consider your arguments under section 552.108 of the Government Code for the submitted information the city has not previously released.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information relates to a criminal case that did not result in a conviction or deferred adjudication. Based on your representation, we conclude the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

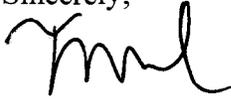
In summary, with the exception of the video we have indicated must be released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 525378

Enc. Submitted documents

c: Requestor
(w/o enclosures)