



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2014

Ms. Michele Freeland
Legal Assistant
Mr. Steven Shuffer
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-19122

Dear Ms. Freeland and Mr. Shuffer:

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# 544894 (DPS PIR Nos. 14-2218, 14-3048, 14-3123, and 14-3627).

The Texas Department of Public Safety (the "department") received four requests for all information pertaining to a specified incident (DPS PIR No. 14-3627). You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note three of the requests at issue, and the entirety of the submitted information, were previously addressed in Open Records Letter No. 2014-14435 (2014). We understand the department is asking for a reconsideration of this ruling. However, we note section 552.301 of the Government Code provides that a governmental body is prohibited

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

from asking for a reconsideration of the attorney general's decision. Gov't Code § 552.301(f). Therefore, we will not reconsider Open Records Letter No. 2014-14435.

Additionally, you now request a ruling for a fourth request for the submitted information. As previously noted, the submitted information was the subject of Open Records Letter No. 2014-14435. In that previous ruling, we concluded the department must withhold the information we marked under section 552.130 of the Government Code and release the remaining information. We have no indication there has been any change in the law, facts, or circumstances surrounding the information that is subject to section 552.130. Therefore, the department must rely on Open Records Letter No. 2014-14435 as a previous determination for this information and withhold it under section 552.130 of the Government Code. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you now submit a representation from the Brazos County District Attorney's Office (the "district attorney's office") seeking to withhold the submitted information that we previously ordered released in Open Records Letter No. 2014-14435 under section 552.108 of the Government Code. The Act does not permit selective disclosure of information to the public. *See id.* §§ 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 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 department may not withhold the submitted information we previously ordered released in Open Records Letter No. 2014-14435 under section 552.108 on behalf of the district attorney's office. As such, the department must release this 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 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 'Meredith L. Coffman', with a long, sweeping flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 544894

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)