



February 4, 2015

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

OR2015-02231

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# 552598 (Reference No. 14-1026-4923).

The El Paso Police Department (the "department") received a request for case number 14-183078. You state the department has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.108. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-18635 (2014). In that previous ruling, we concluded the department must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; must withhold certain motor vehicle information under section 552.130 of the Government Code; must withhold certain information under section 552.136 of the Government Code if a living person owns an interest in the deceased individual's bank accounts; and must release the remaining information. We note the current requestor is the individual whose information was previously withheld under section 552.101 of the Government Code on the basis of common-law privacy in Open Records Letter No. 2014-18635. Therefore, we find the circumstances have changed with respect to the requestor's private information, and the department may not rely on Open Records Letter

No. 2014-18635 as a previous determination for that information. However, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to the remaining information at issue. Accordingly, with the exception of the requestor's private information, we conclude the department must continue to rely on Open Records Letter No. 2014-18635 as a previous determination and withhold or release the submitted information 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).

We note you now seek to withhold, under section 552.108 of the Government Code, some of the information that we previously determined must be released. 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 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 now withhold under section 552.108 the information we previously determined must be released in Open Records Letter No. 2014-18635. As you raise no further exceptions to disclosure for this information, the department must release it. However, we will consider your argument under section 552.108 of the Government Code for the information the department has not previously released.

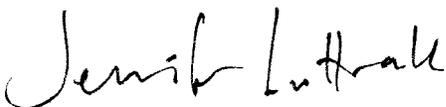
Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information 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 information that was not previously released relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude the department may withhold the information that was not previously released under section 552.108(a)(2) of the Government Code.

In summary, with the exception of the requestor's private information, we conclude the department must continue to rely on Open Records Letter No. 2014-118635 as a previous determination and withhold or release the submitted information in accordance with that ruling. The department may withhold under section 552.108(a)(2) the information we did not previously determine must be released in Open Records Letter No. 2014-18635.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 552598

Enc. Submitted documents

c: Requestor
(w/o enclosures)