



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2015

Ms. Julie P. Doshier
Counsel for the City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2015-09179

Dear Ms. Doshier:

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# 563398 (Ref. No. 70488, 2015-036).

The City of Highland Village (the "city"), which you represent, received a request for all information relating to a specified incident. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

We note some of the submitted information was previously released in response to Open Records Letter No. 2014-19744 (2014). In Open Records Letter No. 2014-19744, we determined the city may withhold the information it marked under section 552.108(a)(1) of the Government Code, but must release the remaining information. We note the city now seeks to withhold information released in response to the prior ruling under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. We note section 552.108 of the Government Code does not except from disclosure basic information about a crime. *See* Gov't Code § 552.108(c) (basic information about an arrested person, an

arrest, or a crime is not excepted under section 552.108); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We also note basic information includes the identification and description of the complainant. Accordingly, we presume the complainant's identification and description was released in accordance with Open Records Letter No. 2014-19744. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. The city seeks to withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person; thus, the informer's privilege, unlike other claims under section 552.101, neither prohibits release nor makes information confidential and may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city may not withhold any portion of the information at issue under the informer's privilege.¹ Further, the city also raises section 552.108 of the Government Code, which does not prohibit release or make information confidential, for some of the submitted information. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, to the extent any of the submitted information was previously released in accordance with Open Records Letter No. 2014-19744, the city may not now withhold such information under section 552.108. However, because section 552.130 of the Government Code makes information confidential, we will consider its applicability to the submitted information. Further, we note circumstances have changed and the city may no longer rely on Open Records Letter No. 2014-19744. Thus, we will address the city's arguments for the information that was not released in accordance with Open Records Letter No. 2014-19744.

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

¹As our determination is dispositive for the identification and description of the complainant, we need not address the city's argument under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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 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). The city states the information it has marked relates to a concluded case that did not result in a conviction or deferred adjudication. Thus, the city may withhold the information it has marked under section 552.108(a)(2) of the Government Code.

We understand the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.² We note some of the remaining information is subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, to the extent the information at issue was not released in accordance with Open Records Letter No. 2014-19744, the city may withhold the information it has marked under section 552.108(a)(2) of the Government Code. The city must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code. The city must release the remaining 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.

²The city states it will withhold motor vehicle record information pursuant to Open Records Decision No. 684. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion. *See* Open Records Decision No. 684 at 8 (2009). However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a) of the Government Code without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to subsection 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 563398

Enc. Submitted documents

c: Requestor
(w/o enclosures)