



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 10, 2015

Ms. Aimee Alcorn
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-18882

Dear Ms. Alcorn:

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# 578788 (CCPD File Nos. KTor11, KTor12, ECru1).

The Corpus Christi Police Department (the "department") received two requests for the 9-1-1 call related to a specified address and a third request for all 9-1-1 calls or reports regarding the same address. We understand you will redact certain information pursuant to the previous determination issued to the department in Open Records Letter No. 2011-16393 (2011).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2015-14205 (2015). In Open Records Letter No. 2015-14205, we concluded the department may withhold the marked information under section 552.108(a)(1) of the Government Code. We understand there has been no change in the law, facts, or circumstances on which the

¹Open Records Letter No. 2011-16393 is a previous determination authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, the originating telephone numbers and addresses of 9-1-1 callers furnished to the department by a 9-1-1 service supplier established in accordance with chapter 772 of the Health and Safety Code.

previous ruling was based. Accordingly, the department may continue to rely on Open Records Letter No. 2015-14205 as a previous determination and withhold or release the identical 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 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 were released in accordance with Open Records Letter No. 2015-14205. Thus, the department 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. 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 department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law.

The department 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 department may not withhold any portion of the information at issue under the informer's privilege.

The department 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. 2015-14205, the department may not now withhold such information under section 552.108. We will consider the department's arguments for the information that was not withheld or released in accordance with Open Records Letter No. 2015-14205.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted information pertains to an active criminal investigation. Based on your representation, we find the department has demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of information withheld or released in accordance with Open Records Letter No. 2015-14205, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

In summary, the department may continue to rely on Open Records Letter No. 2015-14205 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of information withheld or released in accordance with Open Records Letter No. 2015-14205, the department may withhold the submitted information under section 552.108(a)(1) 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

²As we make this determination, we do not address your remaining claim against disclosure of this information.

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 "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" being more prominent than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 578788

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)