



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2017

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 79540

OR2017-22375

Dear Ms. Pemberton:

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# 678947 (PIR No. W022993).

The City of Killeen (the "city") received a request for a specified investigation report. You state you released some information to the requestor. 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 information.

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 explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 (1988), 287 (1981)*. This section is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See Open Records Decision No. 199 (1978)*. An agency that does not qualify as a law enforcement agency may, under limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g., Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493, 272 (1981)*. If an administrative agency's investigation reveals possible criminal conduct that the administrative agency

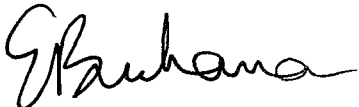
intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1); Attorney General Opinion MW-575; Open Records Decision Nos. 493, 372 at 4 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to incident), 272.

We understand the submitted information pertains to code compliance violations under investigation by the city's Code Enforcement Department (the "department"). However, you have not demonstrated the department is a law enforcement agency for purposes of section 552.108, nor informed us if the information at issue has been forwarded to an appropriate law enforcement agency. Therefore, we find you have failed to demonstrate section 552.108(a)(1) is applicable to the submitted information, and it may not be withheld on that basis. As you raise no other exceptions to disclosure, the submitted information must be released.¹

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,



Emily Buchanan
Attorney
Open Records Division

EB/eb

¹We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 678947

Enc. Submitted documents

c: Requestor
(w/o enclosures)