



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2019-03982

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# 749764 (COK Req. ID# W027219).

The Killeen Police Department (the "department") received a request for all cases relating to four named individuals, including information pertaining to a specified case number. The department states it has released some information to the requestor. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The department seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents we have marked under section 552.108 of the Government Code, and the department must release

them pursuant to section 552.022(a)(17) of the Government Code. However, we will address the department's argument under section 552.108 for the remaining 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 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). The department states the remaining information in report numbers 16-009012, 17-009149, and 17-013911 pertain to active criminal investigations or prosecutions. Based on the department's representation and our review, we conclude the 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, section 552.108(a)(1) is applicable to the remaining information in report numbers 16-009012, 17-009149, and 17-013911.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states report numbers 14-000484, 14-007720, 14-011797, 16-001370, 16-005710, and 18-011060 pertain to closed cases that did not result in convictions or deferred adjudications. Based on the department's representation and our review, we agree section 552.108(a)(2) is applicable to report numbers 14-000484, 14-007720, 14-011797, 16-001370, 16-005710, and 18-011060.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which the department states it has released, the department may withhold the remaining information in report numbers 16-009012, 17-009149, and 17-013911 under section 552.108(a)(1) of the Government Code and report numbers 14-000484, 14-007720, 14-011797, 16-001370, 16-005710, and 18-011060 under section 552.108(a)(2) of the Government Code.

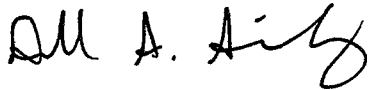
In summary, the department must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic

information, which the department states it has released, the department may withhold the remaining information in report numbers 16-009012, 17-009149, and 17-013911 under section 552.108(a)(1) of the Government Code and report numbers 14-000484, 14-007720, 14-011797, 16-001370, 16-005710, and 18-011060 under section 552.108(a)(2) of the Government Code.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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 749764

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a right of access to some of the information being released in this instance. See Fam. Code § 261.201(k) (parent of child victim of abuse or neglect who is not suspected of committing abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code); Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).