



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2019

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

OR2019-31314

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# 795667 (City ID# W029891).

The Killeen Police Department (the "department") received a request for a specified incident report. You state you have 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)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in 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)(1)(A); Open Records Decision No. 434 (1986). You state the submitted information pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers

to the basic information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense, as well as the names and addresses of arrestees. *See* ORD 127 at 3-4. However, we note basic information does not include the address or telephone number of the complainant, unless the address is the location of the crime. *See id.* Accordingly, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ Gov't Code § 552.1175. Section 552.1175 applies, in part, to “a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by [s]ection 437.001 [of the Government Code].” Act of May 21, 2019, 86th Leg., R.S., H.B. 1351, § 4 (to be codified at Gov't Code § 552.1175(a)(15)). We note the requestor has a right of access to her own personal information under section 552.023 of the Government Code, and this information may not be withheld from her under section 552.1175. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Upon review, we find some of the basic information, which we have marked, pertains to an individual other than the requestor who may be subject to section 552.1175(a)(15) of the Government Code. Thus, to the extent the information we have marked pertains to an individual other than the requestor who is subject to section 552.1175(a)(15) and the individual elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code. If the individual whose information we have marked is not subject to section 552.1175(a)(15) of the Government Code or no election is made, the department may not withhold this information under section 552.1175 of the Government Code.

In summary, with the exception of the basic information, which must be released to this requestor, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing the basic information to this requestor, then, to the extent the information we have marked pertains to an individual other than the requestor who is subject to section 552.1175(a)(15) and the individual elects to restrict

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

access to the information in accordance with section 552.1175(b), the department must withhold the basic information we have marked under section 552.1175 of the Government Code.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 795667

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As noted above, the requestor may have a right of access to some of the basic information which may be subject to section 552.1175 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. We note section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of an individual subject to section 552.1175(a) of the Government Code who properly elects to keep this information confidential. *See* Gov't Code § 552.1175(b), (f).