



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

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

OR2020-08502

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# 814672 (PIR# W030747).

The City of Killeen (the "city") received a request for information related to the execution of no-knock warrants, including instructional materials. You state you have released some information. You state the city will rely on Open Records Letter No. 2019-18844 (2019) and withhold or release some of the requested information in accordance with that ruling.¹ You claim some of the requested information is subject to section 552.027 of the Government Code and copyright law. You also claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.027 of the Government Code provides in part:

- (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or

¹ 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).

publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

...

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027(a), (c). Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by a governmental body. Therefore, section 552.027 provides exemptions from the definition of "public information" under section 552.002 of the Government Code for commercially available research material.

We understand the requested manual, which relates to the drafting of warrants, was purchased by the city. You indicate the requested manual is commercially available and could be purchased from the copyright holder. Therefore, you contend the city is not required to permit inspection or provide a copy of this manual. You do not indicate, however, whether the information contained in this manual is made part of, incorporated into, or referred to in a city rule or policy. *See id.* § 552.027(c). Consequently, we are unable to conclude section 552.027 completely excuses the city from permitting the inspection or copying of the information at issue. Thus, we will rule in the alternative. If the information in the responsive manual at issue is not made part of, incorporated into, or referred to in a rule or policy of the city, then the city is not required to permit inspection of the manual at issue. *See id.* § 552.027(a). However, the city must allow inspection of the manual at issue under section 552.027(c) if it is made part of, incorporated into, or referred to in a rule or policy of the city. In any event, section 552.027 does not require the city to provide a copy of this information to the requestor.

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." *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why 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 incident report numbers 19-009739 and 19-010359 relate to pending criminal investigations or prosecutions. Based upon this representation, we conclude release of incident report numbers 19-009739 and 19-010359 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 incident report numbers 19-009739 and 19-010359.

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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.108(a)(2), .301(e)(1)(A). The city states incident report number 19-013164 relates to a criminal investigation which concluded in a result other than conviction or deferred adjudication. Based upon these representations and our review, we agree section 552.108(a)(2) is applicable to incident report number 19-013164.

However, 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). Accordingly, with the exception of basic information, which you state you have released, the city may withhold incident report numbers 19-009739 and 19-010359 under section 552.108(a)(1) of the Government Code and incident report number 19-13164 under section 552.108(a)(2) of the Government Code.

In summary, if the information in the responsive manual at issue is not made part of, incorporated into, or referred to in a rule or policy of the city, then the city is not required to permit inspection of the manual at issue.; however, the city must allow inspection of the manual at issue under section 552.027(c) of the Government Code if it is made part of, incorporated into, or referred to in a rule or policy of the city. In either event, section 552.027 of the Government Code does not require the city to provide a copy of this information to the requestor. With the exception of basic information, which you state you have released, the city may withhold incident report numbers 19-009739 and 19-010359 under section 552.108(a)(1) of the Government Code and incident report number 19-13164 under section 552.108(a)(2) 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

² Although basic information includes an arrestee's social security number, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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,

Sean McCormick
Attorney
Open Records Division

SMC/jxd

Ref: ID# 814672

Enc. Submitted documents

c: Requestor
(w/o enclosures)