



December 7, 2001

Ms. Traci S. Berven
Assistant City Attorney
City of Killeen
402 North 2nd Street
Killeen, Texas 76541-5298

OR2001-5730

Dear Ms. Berven:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155487.

The City of Killeen Police Department (the "department") received a request for copies of all information pertaining to the arrest, investigation, and possible indictment of a specified person. You indicate that you understand the request to be a request for information pertaining to case number 01-1408. You state that you have released an arrest report to the requestor. You claim, however, that the remaining responsive information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents and videotape.¹

Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did* not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2) (emphasis added). You claim that the submitted information is excepted from disclosure pursuant to sections 552.108(a)(1) and (a)(2) of the Government Code. Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution. Section 552.108(a)(2) protects records pertaining to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that all suspects in the present case have been arrested, but that none of these individuals have been brought to trial on any charges. You also state that while the investigation into the present case has concluded in arrests, the concluded investigation "has not resulted in conviction or deferred adjudication." Based on your representations and our review of the submitted information, we conclude that section 552.108(a)(1) was the appropriate exception to disclosure to raise in this instance, not section 552.108(a)(2), which protects information relating to an investigation that concluded in a *final* result other than conviction or deferred adjudication.

However, we note that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of basic information, you may withhold the submitted information from disclosure pursuant to section 552.108(a)(1) of the Government Code. *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

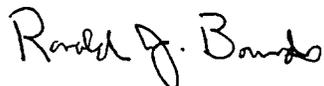
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/sdk

Ref: ID# 155487

Enc. Submitted documents and videotape

c: Mr. Nelson Torres
P.O. Box 1074
Killeen, Texas 76540
(w/o enclosures)