



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2008

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2008-16377

Dear Ms. Mapes:

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# 329441.

The Killeen Police Department (the "department") received a request for all police records pertaining to the requestor. You state the department has released basic information. *See* Gov't Code § 552.108(c) (stating that basic information about arrested person, arrest, or crime may not be withheld under Gov't Code § 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.²

¹Although you initially raised section 552.101 of the Government Code, you do not present any arguments against disclosure under that section, nor does our review of the submitted information reveal any information subject to section 552.101. Thus, we do not address your argument under section 552.101.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, you inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-12634 (2008). In that ruling, our office determined, with the exception of basic information, the department may withhold incident report numbers 07-017510, 08-006852, 08-008923, and 08-008931 pursuant to section 552.108(a)(1) of the Government Code, and report numbers 07-017060, 08-005734, and 08-006788 pursuant to section 552.108(a)(2) of the Government Code. You inform us there has been no change in the law, facts, and circumstances on which Open Records Letter No. 2008-12634 is based with regard to report numbers 07-017060, 08-005734, 08-006788, 08-006852, 08-008923, and 08-008931. We therefore agree the department may continue to rely on that ruling as a previous determination and withhold this information in accordance with Open Records Letter No. 2008-12634 for those six incident reports. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (governmental body may rely on prior ruling as a previous determination when (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). However, you inform us the circumstances on which Open Records Letter No. 2008-12634 is based have changed with regard to incident report number 07-017510. Thus, we will address your argument against disclosure for report number 07-017510, as well as the remaining submitted reports.

Next, we must address the department's procedural obligations under the Act. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days after receiving the written request. Gov't Code § 552.301(a), (b). In this instance, you did not claim an exception under section 552.108 of the Government Code until the fifteen-business-day deadline. Thus, we find the department failed to comply with the requirements of section 552.301 with respect to its claim under section 552.108.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *Id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is a

discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the department has waived its claim under section 552.108 of the Government Code; therefore, the department may not withhold any of the remaining submitted reports under this exception. However, because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of section 552.130 to the remaining submitted reports.³

Section 552.130 excepts from disclosure "information [that] relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a). We have marked the information that is generally subject to section 552.130. We note, however, section 552.130 protects personal privacy. Therefore, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a).⁴ Information to which the requestor has a right of access under section 552.023 may not be withheld from her under section 552.130. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, we are unable to determine which, if any, of the vehicles at issue in the remaining submitted reports belong to the requestor. Accordingly, the department must withhold the marked Texas driver's license and identification numbers, and the marked Texas license plate and vehicle identification numbers that belong to individuals other than the requestor, under section 552.130 of the Government Code. Any Texas driver's license number belonging to the requestor or any Texas license plate number or vehicle identification number pertaining to a vehicle owned by the requestor may not be withheld under section 552.130, and must be released to the requestor pursuant to section 552.023 of the Government Code.

In summary, the department may continue to rely on Open Records Letter No. 2008-12634 for incident report numbers 07-017060, 08-005734, 08-006788, 08-006852, 08-008923,

³The 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).

⁴Section 552.023(a) provides: "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

and 08-008931. The department must withhold from incident report numbers 07-015061, 08-012690, and 08-012887 only the marked Texas driver's license and identification numbers and Texas license plate and vehicle identification numbers that pertain or belong to individuals other than the requestor under section 552.130 of the Government Code. The remaining information in report numbers 07-015061, 08-012690, and 08-012887, and the remaining submitted reports must be released.⁵

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

⁵We note the remaining submitted information contains social security numbers. 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. The requestor has a right, however, to her own social security number. *See generally* Gov't Code 552.023.

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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "Katherine M. Kroll". The signature is fluid and cursive, with the first name being the most prominent.

Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 329441

Enc. Submitted documents

cc: Requestor
(w/o enclosures)