



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2010

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

OR2010-02474

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# 369455 (Killeen ID# W002692).

The Killeen Police Department (the "department") received a request for radio traffic recordings and documents related to a specific incident. You state the department does not maintain radio traffic recordings.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably 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). You state the information at issue relates to a pending criminal investigation and prosecution. You inform us the Federal

¹We note that the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Bureau of Investigation objects to the release of the information at issue. Based upon this representation and our review, we conclude that the release of the information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we agree the submitted information is subject to section 552.108(a)(1) of the Government Code.

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 “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) 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 http://www.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

² You also assert the requested information is confidential under the federal Homeland Security Act and should be withheld pursuant to section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Although you raise the federal Homeland Security Act, you do not cite to any specific provision of that Act, and we are not aware of any, that makes any portion of the submitted information confidential. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

Ref: ID# 369455

Enc. Submitted documents

c: Requestor
(w/o enclosures)