



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2010

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
3304 Community Boulevard
Killeen, Texas 76542

OR2010-15334

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# 396043 (Killeen request ID number W003992).

The Killeen Police Department (the "department") received a request for the personnel files of two named department officers and information pertaining to a specified arrest.¹ You state you have released some of the responsive information, including basic information regarding the arrest. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). 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 representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹We note the requestor excluded social security numbers, addresses, dates of birth, and driver's license numbers from the scope of his request.

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

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. You state the City of Killeen (the “city”) is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer’s civil service file that the city’s civil service director is required to maintain, and an internal file that the department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). Information maintained in a police department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the information in Attachment D are the personnel records of the named officers maintained by the department in accordance with section 143.089(g). We find all the documents at issue pertain to the officers’ employment with the department. Accordingly, we agree the information in Attachment D is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.³

Next, we note Attachment E includes a magistrate’s warning that has been signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under other law. *See* Gov’t Code § 552.022(a)(17). Although you seek to withhold this document under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(17). As you raise no further exceptions against the disclosure of the magistrate’s warning, it must be released.

You raise section 552.108 of the Government Code for the remaining information in Attachment E. Section 552.108(a)(1) 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[.]” Gov’t Code § 552.108(a)(1). 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 remaining information in Attachment E relates to a pending prosecution. Based on this representation and our review, we find the release of the information at issue would interfere

³We note section 143.089(g) of the Local Government Code requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director’s designee.

with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, with the exception of basic information, which you state you have released, the department may withhold the remaining information in Attachment E under section 552.108(a)(1).

In summary, the department must withhold Attachment D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department must release the magistrate's warning we have marked in Attachment E pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which you state you have released, the department may withhold the remaining information in Attachment E under section 552.108(a)(1) of the Government Code.

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 396043

Enc. Submitted documents

c: Requestor
(w/o enclosures)