



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2010

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

OR2010-15727

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# 397155 (Killeen ID# W004019).

The City of Killeen (the "city") received a request for the statement the requestor made regarding a specified case. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information consists of a portion of the incident report for the specified case and a statement of another individual regarding the case. The requestor seeks his own statement regarding the case. The submitted information is therefore not responsive to the present request for information. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we must address the city's responsibilities under the Act. Section 552.301(e)(1)(D) of the Government Code provides a governmental body must submit a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested. You state you submitted a "[c]opy of a sample of the documents to which this request for opinion applies and supporting documents." We note, however, you have not submitted the requested statement of the requestor regarding the case. Although you have submitted a portion of the incident report and a statement of another

individual, this does not consist of a representative sample of the requested information. Accordingly, we find the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). 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 is a discretionary exception to disclosure that protects a governmental body's interests and generally is not a compelling reason to withhold information. *See* Open Records Decision Nos. 663 at 5 (1999), 177 (1977). Furthermore, by failing to submit any responsive information for our review, we have no basis for finding the information confidential under any other law. Thus, we have no choice but to order the information at issue released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 397155

Enc. Submitted documents

c: Requestor
(w/o enclosures)