



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2011

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

OR2011-14337

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# 431930 (Killeen ID#s W006194, W006195, and W006196).

The Killeen Police Department (the "department") received three requests for the 9-1-1 calls, video recordings, mug shot, arrest reports, arrest warrants, search warrants, and returns relating to a specified arrest of a named individual. You state the department does not have some of the requested documents or any of the requested video recordings.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.107, 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 Code § 552.101. This section encompasses statutes such as the federal Homeland Security

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.

Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). Although you raise the federal Homeland Security Act, you do not cite to any specific provision of that Act, and we are not aware of any, that makes any portion of the requested information confidential. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). Therefore, the department may not withhold any information under section 552.101 of the Government Code on that basis.

You claim the requested information is excepted from disclosure under sections 552.101 and 552.107(2) of the Government Code because a federal judge has issued a gag order regarding information involving the criminal case of Naser Abdo.³ Section 552.107(2) of the Government Code provides that information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). You have submitted a copy of a court order signed by Judge Walter S. Smith, United States District Judge for the United States District Court for the Western District of Texas, Waco Division, in the case styled *United States v. Naser Jason Abdo*, Criminal No. W-11-CR-00182. The court order provides in part that, from now until the final verdict in the case, the defendant and his counsel, the United States Attorney and his representatives and agents, the Federal Bureau of Investigation and its representatives and agents, and all potential witnesses “shall not give or authorize any extrajudicial statement or interview to any person or persons associated with any public communications media . . . relating to the trial, the parties, or issues in this case which could interfere with a fair trial or prejudice [the parties] or the administration of justice and which is not a matter of public record.” Order at 2-3, *United States v. Abdo*, No. W-11-CR-00182 (W. D. Tex., August 12, 2011). You assert the gag order covers the requested information. We note, however, the gag order forbids certain statements or interviews by certain individuals but does not make any information confidential. We further note you have not explained how the gag order applies to the department. Upon review, we conclude you have not established the gag order makes the information at issue confidential or prohibits the department from releasing any of the requested information. Therefore, we find the department may not withhold the requested information under section 552.107(2) of the Government Code.

Section 552.108(a)(1) of the Government Code 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(a)(1) 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 requested information relates to a pending criminal investigation and the county attorney, district attorney, and Assistant United States Attorney object to its release. You further state

³Although you raise section 552.101 in conjunction with the gag order, we note the proper exception to raise in this instance is section 552.107(2). *See* Gov’t Code § 552.107(2). Accordingly, we will consider your argument only under this section.

release of the submitted information would interfere with the investigation and prosecution of the crime. Based on these representations and our review, we conclude the release of the requested 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) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) is applicable to the requested information.

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered basic information). Thus, with the exception of basic information, the department may withhold the requested information 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 431930

Enc. Submitted documents

c: Requestor
(w/o enclosures)