



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2011

Ms. Linda Pemberton
Paralegal
City of Killeen
Office of the City Attorney
P.O. Box 1329
Killeen, Texas 76540-1329

OR2011-19242

Dear Ms. Pemberton:

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# 441214 (ORR# W6592).

The City of Killeen (the "city") received a request for all reports involving the requestor and two named individuals during a specified time period. You claim 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.

Initially, we note the submitted information was the subject of a previous request for information from the same requestor, as a result of which this office issued Open Records Letter No. 2011-15366 (2011). In that ruling, we determined pursuant to section 261.201(k) of the Family Code, incident report number 10-011351 may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We further held with the exception of the basic information, the city may withhold incident report number 10-013062 under section 552.108(a)(1) of the Government Code, and incident report numbers 10-011351, 10-012164, 10-011366, and 10-012818 under section 552.108(a)(2) of the Government Code; however, in releasing the basic information from incident report number 10-011351, the city must withhold the identifying information of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the

Family Code. You indicate there has been no change in the law, facts, or circumstances with respect to incident report numbers 10-013062, 10-011351, 10-011366, and 10-012818, since the issuance of the previous ruling. Accordingly, we conclude the city must rely on Open Records Letter No. 2011-15366 as a previous determination and withhold or release incident report numbers 10-013062, 10-011351, 10-011366, and 10-012818 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, in response to the present request, you argue a different subsection of section 552.108 of the Government code applies to incident report number 10-012164. Thus, the circumstances for incident report number 10-012164 have changed. Accordingly, we will consider your submitted argument against disclosure of incident report number 10-012164.

You claim section 552.108(a)(1) of the Government Code for incident report number 10-012164. Section 552.108 provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, subsections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive. Subsection 552.108(a)(1) protects information the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. 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).

In this instance, you cite to subsection 552.108(a)(1) and argue incident report number 10-012164 pertains to an active criminal investigation. However, in response to the previous request for the same information, you raised subsection 552.108(a)(2) of the Government Code for incident report number 10-012164 and informed this office the information at issue pertained to a concluded investigation in which the city's police

department did not anticipate filing any charges. As noted above, in response to your prior request for a ruling this office issued Open Records Letter No. 2011-15366, which held with the exception of basic information, the city may withhold the information at issue under section 552.108(a)(2) of the Government Code. In raising subsection 552.108(a)(1), you have provided no additional arguments explaining how the information at issue, which you previously described as relating to a concluded case, now relates to an ongoing criminal investigation. Because of your contradictory representations, we find you have failed to sufficiently demonstrate the applicability of section 552.108(a)(1) to incident report number 10-012164. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, the city may not now withhold incident report number 10-012164 under section 552.108 of the Government Code.

In summary, the city must rely on Open Records Letter No. 2011-15366 as a previous determination and withhold or release incident report numbers 10-013062, 10-011351, 10-011366, and 10-012818 in accordance with that ruling. The city must release incident report number 10-012164.¹

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

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¹We note the information being released 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. *See* Gov't Code § 552.147(b).

Ref: ID# 441214

Enc. Submitted documents

c: Requestor
(w/o enclosures)