



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2012

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

OR2012-07056

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# 457597 (PIR No. W007834).

The Killeen Police Department (the "department") received a request for information related to a traffic accident. You state some of the requested information has been released. You claim other responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note the submitted information includes a court document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the court document we have marked under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; 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 confidential for purposes of section 552.022(a)(17). Therefore, the marked court document may not be withheld under section 552.108 of the Government Code and must be released pursuant to section 552.022(a)(17) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code for the remaining information at issue. 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information is related to a pending prosecution. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *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).

We note the remaining information includes a statutory warning and a notice of suspension, which we have marked. Because copies of those documents are provided to the person who is the subject of the warning and the notice, we find the release of the statutory warning and the notice of suspension will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the statutory warning and the notice of suspension may not be withheld under section 552.108.

We also note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest 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 deemed public by *Houston Chronicle*). The department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. You state basic information has been released. We therefore conclude the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

Lastly, we note the statutory warning and the notice of suspension contain a driver’s license number. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country.¹ *See* Gov’t Code § 552.130(a)(1). The department must withhold the driver’s license number we have marked under section 552.130 of the Government Code.

In summary, the department (1) must release the marked court document pursuant to section 552.022(a)(17) of the Government Code; (2) may withhold the remaining

¹This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

information at issue under section 552.108(a)(1) of the Government Code, except for the statutory warning and the notice of suspension; (3) must withhold the marked driver's license number under section 552.130 of the Government Code; and (4) must release the remaining information in the warning and the notice.

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 457597

Enc: Submitted information

c: Requestor
(w/o enclosures)