



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2012

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

OR2012-13591

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# 467712 (No. W008642).

The Killeen Police Department (the "department") received a request for information involving two named individuals and a specified time period. 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 first note the submitted information includes court documents, which we have marked. 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). Thus, the marked court documents are subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court documents 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* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Therefore, the department may not withhold any of the information in the court documents under section 552.108.

We note the court documents contain information encompassed by section 552.130 of the Government Code, which makes information confidential for purposes of section 552.022(a)(17). Section 552.130 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.<sup>1</sup> See Gov't Code § 552.130(a)(1). The department must withhold the driver's license number we have marked in the court documents under section 552.130 of the Government Code.<sup>2</sup> The remaining information in the court documents 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 criminal prosecution. You inform us the Bell County Attorney's office has requested that the remaining information not be released. 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 section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 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. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department (1) must withhold the marked driver's license number under section 552.130 of the Government Code; (2) must release the remaining information in the court documents pursuant to section 552.022(a)(17) of the Government Code; and (3) may

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<sup>1</sup>This 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).

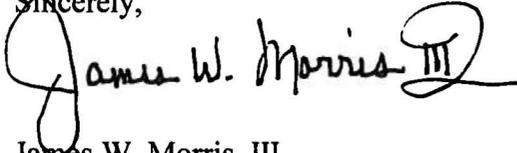
<sup>2</sup>We note the court documents also contain social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c), which must be released.<sup>3</sup>

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](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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 467712

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note basic information includes an arrested person's social security number. As previously noted, 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.