ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2013

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

OR2013-05235

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# 482889 (No. W009746).

The Killeen Police Department (the "department") received a request for information related to two named individuals at two specified addresses during a specified time period. You state you have released some information to the requestor. 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.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate

children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Generally, only highly intimate information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, information must be withheld in its entirety to protect the individual's privacy.

In this instance, the requestor knows both the identity of the individuals involved and the nature of the incidents in call reports 1373509 and 1473147 and incident reports 12-005446 and 12-015294. Therefore, withholding only certain details of these incidents from the requestor would not preserve the subject individuals' common-law right of privacy. Accordingly, the department must withhold call report 1373509 and incident report 12-005446 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.[1] However, we note call report 1473147 and incident report 12-015294 pertain to the requestor's client. Section 552.023 of the Government Code states a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Thus, in this instance, the requestor has a special right of access to his client's information at issue, and the department may not withhold call report 1473147 or incident report 12-015294 under section 552.101 in conjunction with common-law privacy.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state incident report 12-002659 concerns a pending criminal investigation. Based on your representation and our review of the information, we find release of this information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is generally applicable to incident report 12-002659.

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[1]As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

Section 552.108(a)(2) 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 . . . it is information that 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)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A).

You state call reports 1473147, 1446752, and 1473139, and incident report 12-015294, concern cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we find the department has demonstrated the information at issue relates to criminal cases that have concluded in a final result other than a conviction or deferred adjudication. Thus, we find section 552.108(a)(2) is generally applicable to call reports 1473147, 1446752, and 1473139, and incident report 12-015294.

We note, however, 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" information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold incident report 12-002659 under section 552.108(a)(1) of the Government Code and call reports 1473147, 1446752, and 1473139, and incident report 12-015294, under section 552.108(a)(2) of the Government Code.

However, we note some of the basic information in call report 1446752 includes information subject to common-law privacy. As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. We find some of the basic information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in call report 1446752 under section 552.101 of the Government Code in conjunction with common-law privacy.

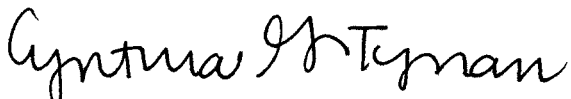
In summary, the department must withhold call report 1373509 and incident report 12-005446 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold incident report 12-002659 under section 552.108(a)(1) of the Government Code, and call reports 1473147, 1446752, and 1473139, and incident report 12-015294, under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked in call

report 1446752 under section 552.101 of the Government Code in conjunction with common-law privacy.[2]

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 482889

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[2]We note the information being released contains confidential with respect to the general public. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.