



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2013

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

OR2013-13489

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# 495271 (W010667).

The City of Killeen (the "city") received a request for report number 13-003059 and specified reports pertaining to a named individual for a specified time period. You state you have released some information. 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. We have also considered comments received from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive, because it was created outside the date range specified in the request. This ruling does not address the public availability of information that is not responsive to the request, and the city is not required to release non-responsive information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

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<sup>1</sup>As we are able to make this determination, we need not address your argument against disclosure of this information.

§ 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You claim the information you have marked is confidential under section 261.201. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Upon review, we agree the information you have marked consists of reports of alleged child abuse and neglect. As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, the information you have marked is confidential under section 261.201 of the Family Code, and the city must withhold it under section 552.101 on that basis.

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 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 responsive information relates to concluded investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the information at issue.

Section 552.108 of the Government Code 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 Publ’g Co. v. Department of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus,

with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

You seek to withhold the complainant's identifying information from the basic information in call for service number 1539786 under section 552.101 of the Government Code in conjunction with the informer's privilege. Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990).

You assert the complainant's identifying information is protected under the informer's privilege. You state the complainant reported a possible violation of section 22.01 of the Texas Penal Code. However, upon review, we find the submitted information reflects the subject of the complaint knows the identity of the complainant. Accordingly, we conclude the city may not withhold the identifying information of the complainant in call for service number 1539786 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the city may withhold the remaining responsive information under section 552.108(a)(2) 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.texasattorneygeneral.gov/open/>

[orl\\_ruling\\_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen J. Santos". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 495271

Enc. Submitted documents

c: Requestor  
(w/o enclosures)