



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2013

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

OR2013-13664

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# 495544 (ID# W010649).

The Killeen Police Department (the "department") received a request for fifteen specified police reports and sixty-one specified calls for service reports.<sup>1</sup> You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 claiming section 552.108(a)(1) must reasonably explain how and why

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<sup>1</sup>You indicate the requestor was required to make a deposit for payment of anticipated costs under section 552.263 of the Government Code. You also state the department received the deposit on May 20, 2013. See Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

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). You state report number 09-000066 pertains to a pending criminal investigation. However, we note report number 09-000066 pertains to an allegation of aggravated assault with a deadly weapon that occurred on January 1, 2009. The statute of limitations for the offense described in this report is three years. *See* Penal Code § 22.02(b) (aggravated assault is felony of second degree); Crim. Proc. Code art. 12.01(7) (providing an indictment or information on felony not listed in articles 12.01(1)-(6) may be presented within three years from the date of the commission of the offense, and not afterward). More than three years have elapsed since January 1, 2009. You have not informed this office that any criminal charges were filed within the limitations period or that prosecution for this case was pending when the department received the request for information. Furthermore, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of crime. Thus, section 552.108(a)(1) is not applicable to report number 09-000066, and the department may not withhold it on this basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 05-014649, 06-002477, 06-004435, 06-009396, 06-009835, 07-005386, 07-013581, 08-005763, and 08-008651 pertain to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City 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). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report numbers 05-014649, 06-002477, 06-004435, 06-009396, 06-009835, 07-005386, 07-013581, 08-005763, and 08-008651 under section 552.108(a)(2) of the Government Code.

We note report number 09-000066 contains information subject to sections 552.130 and 552.137 of the Government Code.<sup>2</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130(a). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). The information at issue is not within the scope of section 552.137(c). Therefore, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.<sup>3</sup>

In summary, with the exception of basic information, the department may withhold report numbers 05-014649, 06-002477, 06-004435, 06-009396, 06-009835, 07-005386, 07-013581, 08-005763, and 08-008651 under section 552.108(a)(2) of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department must release the remaining information.<sup>4</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

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

<sup>4</sup>We note the information being released contains a social security number. 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. *Gov't Code* § 552.147(b).

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, appearing to be 'Nneka Kanu', written over the word 'Sincerely,'.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 495544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)