



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2013

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

OR2013-14641

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# 501418 (W011174).

The Killeen Police Department (the "department") received a request for reports pertaining to the requestor. You state the department has released some information. 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.

Initially, we note the submitted information includes a court-filed document, which is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See* 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 section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. Therefore, the court-filed document may not be withheld under section 552.108. As no other exceptions are raised, the department must release the court-filed document pursuant to section 552.022(a)(17) of the Government Code.

Section 552.108 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 report numbers 10-005290, 10-009383, 10-010770, 10-017652, 11-016841, and 13-005919 relate to pending criminal investigations. Based on your representation, we find release of the information at issue 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 per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining reports relate to closed criminal investigations that did not result in conviction or deferred adjudication. Based on your representation, we find section 552.108(a)(2) is applicable to the remaining reports.

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*. *See* 531 S.W.2d at 186-88; *see also* 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, which you state has been released, the department may withhold report numbers 10-005290, 10-009383, 10-010770, 10-017652, 11-016841, and 13-005919 under section 552.108(a)(1) of the Government Code and the remaining reports under section 552.108(a)(2) of the Government Code.

In summary, the department must release the court-filed document pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold report numbers 10-005290, 10-009383, 10-010770, 10-017652, 11-016841, and 13-005919 under section 552.108(a)(1) of the Government Code and the remaining reports 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](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, consisting of several overlapping strokes that form the name Ana Carolina Vieira.

Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 501418

Enc. Submitted documents

c: Requestor  
(w/o enclosures)