



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2013

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

OR2013-17377

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# 501402 (Killeen ID No. W011134).

The Killeen Police Department (the "department") received a request for all calls for service or police reports for a specified address during a specified time period. You state the department has released some of the requested 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.

Initially, we note some of the submitted information consists of a court-filed document 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). The return and inventory that is signed by a judge is subject to section 552.022(a)(17) and must be released unless it is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108).* Therefore, the department may not withhold the information subject to section 552.022 under section 552.108. As you raise no further exceptions against the disclosure of this

information, which we have marked, it must be released. We will address your arguments under section 552.108 for the remaining information that is not subject to section 552.022.

Section 552.108(a) 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: (1) 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 numbers 12-008969, 12-013897, 12-014690, 12-015892, and 13-001191 pertain to pending criminal investigations by the department. You also explain report number 12-009159 pertains to a case that is pending prosecution by the district attorney’s office, which objects to the release of the information at issue. Based upon these representations and our review, we conclude release of the information pertaining to these report numbers would interfere with the detection, investigation, or prosecution of crime. *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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

Section 552.108(a) of the Government Code also excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: . . . (2) 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 that 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state call for service report numbers 1513376 and 1545832 pertain to criminal cases that concluded in results other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to these two call for service reports.

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). Basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, an identification and description of the complainant. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information and the information that is subject to section 552.022 of the Government Code, the department may withhold report numbers 12-008969, 12-009159, 12-013897, 12-014690, 12-015892, and 13-001191 under

section 552.108(a)(1) and call for service report numbers 1513376 and 1545832 under section 552.108(a)(2).

You argue portions of the basic information are protected under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See 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). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided 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 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.

You assert the complainants' identifying information in call for service report numbers 1513376 and 1545832 is protected under the common-law informer's privilege. You state the two complainants contacted the department to report violations of section 16.29 of the City of Killeen Code of Ordinances relating to solicitation of controlled substances, which you state is punishable by confinement. You do not indicate, nor does it otherwise appear, the subjects of the complaints know the identities of the complainants. Therefore, based on your representations and our review, we conclude the department may withhold the complainants' identifying information, which we have marked, under section 552.101 in conjunction with the common-law informer's privilege. However, we find none of the remaining basic information in the call for service reports identifies an informer; thus, the department may not withhold it under section 552.101 on this basis.

In summary, with the exception of the basic information and the information we have marked that is subject to section 552.022 of the Government Code, the department may withhold report numbers 12-008969, 12-009159, 12-013897, 12-014690, 12-015892, and 13-001191 under section 552.108(a)(1) of the Government Code and call for service report numbers 1513376 and 1545832 under section 552.108(a)(2) of the Government Code. The department may withhold the information we have marked under section 552.101 of the

Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.¹

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 501402

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the basic information being released contains the social security number of an arrestee. 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).