



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2014

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

OR2014-01952

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# 512660.

The City of Killeen (the "city") received a request for copies of all 9-1-1 calls and police reports for specified addresses from specified time periods. You state the city has 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.

Initially, we note reports 07-011533 and 10-014484 were previously released to the requestor. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code for reports 07-011533 and 10-014484, this section does not prohibit the release of information or make

information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the city may not now withhold reports 07-011533 and 10-014484 under section 552.108. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.007, we will address the applicability of section 552.130 to reports 07-011533 and 10-014484.¹

Next, we note report 12-010289 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-19774 (2013). Additionally, we note reports 07-003516, 11-000439, and 11-016804 were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-05415 (2012). In Open Records Letter No. 2013-19774, we determined, with the exception of basic information, the city may withhold report 12-010289 under section 552.108(a)(2) of the Government Code. In Open Records Letter No. 2012-05415, we determined, with the exception of basic information, the city may withhold report 11-016804 under section 552.108(a)(1) of the Government Code and reports 07-003516 and 11-000439 under section 552.108(a)(2) of the Government Code. With respect to these reports, we have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the city may rely on Open Records Letter Nos. 2013-19774 and 2012-05415 as previous determinations and withhold or release reports 07-003516, 11-000439, 11-016804, and 12-010289 in accordance with those rulings.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 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 reports 10-013335, 13-011053, and 13-013065 relate to ongoing criminal

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²As we are able to make this determination, we need not address your arguments against disclosure of this information.

investigations. Based on your representations, we conclude the release of reports 13-011053 and 13-013065 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, we find section 552.108(a)(1) is generally applicable to reports 13-011053 and 13-013065.

However, we note report number 10-013335 pertains to a misdemeanor theft that occurred in 2010. *See Penal Code* § 31.03(e)(1)(A) (offense of theft is Class C misdemeanor if value of property stolen is less than \$50). The statute of limitations for a misdemeanor is two years from the date of the offense. *See Crim. Proc. Code art. 12.02*. More than two years have elapsed since the events giving rise to the investigation in report 10-013335. You have not informed this office any criminal charges were filed within the limitations periods for this offense. Thus, we find you have not demonstrated release of report 10-013335 would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). Therefore, the city may not withhold report 10-013335 under section 552.108(a)(1) of the Government Code.

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. *Id.* § 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state calls for service report 1072669 pertains to an investigation that concluded in a result other than a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this report.

As you acknowledge, 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* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold reports 13-011053 and 13-013065 under section 552.108(a)(1) of the Government Code and calls for service report 1072669 under section 552.108(a)(2) of the Government Code.

We understand you to contend some of the basic information in calls for service report 1072669 is protected by common-law privacy. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Gov't Code* § 552.101. Section 552.101 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how any of the remaining basic information at issue is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, none of this information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code 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). We note section 552.130 protects privacy interests; therefore, the requestor has a right of access to his own driver's license information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the city must withhold the information we have marked in reports 07-011533, 10-013335, and 10-014484 under section 552.130 of the Government Code.

In summary, the city may rely on Open Records Letter Nos. 2013-19774 and 2012-05415 as previous determinations and withhold or release reports 07-003516, 11-000439, 11-016804, and 12-010289 in accordance with those rulings. With the exception of basic information, the city may withhold reports 13-011053 and 13-013065 under section 552.108(a)(1) of the Government Code and calls for service report 1072669 under section 552.108(a)(2) of the Government Code. When releasing basic information for calls for service report 1072669, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in reports 07-011533, 10-013335, and 10-014484 under section 552.130 of the Government Code. The city must release the remaining information.³

³We note the information being released contains social security numbers. 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. *See* Gov't Code § 552.147(b). However, the requestor has a right of access to his own social security number and it may not be withheld from him. *See generally id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eb

Ref: ID# 512660

Enc. Submitted documents

c: Requestor
(w/o enclosures)