



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2014

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

OR2014-20750

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# 543385 (Killeen ID #W014278).

The Killeen Police Department (the "department") received a request for a specified call for service report and a specified police report. You state you have released some of the requested 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 was the subject of a previous request for information from a different requestor, in response to which this office issued Open Records Letter No. 2014-07553 (2014). In that ruling, we concluded, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code because it related to a case that ended in a result other than a conviction or deferred adjudication. However, in response to the present request, you argue a different subsection of section 552.108(a) of the Government Code applies. Thus, the circumstances surrounding this information have changed, and you may not rely on Open Records Letter No. 2014-07553 as a previous determination. *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 information is or is not excepted from disclosure). Accordingly, we will address your argument against disclosure of the submitted information.

You now raise section 552.108(a)(1) of the Government Code. Section 552.108 provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the 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)(1)–(2). Generally, sections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive. Section 552.108(a)(1) protects information the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. 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).

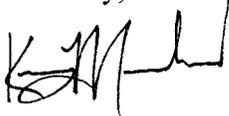
In this instance, you raise section 552.108(a)(1) and argue the submitted information pertains to an active criminal investigation. However, in response to the previous request for the same information, you raised section 552.108(a)(2) of the Government Code and informed this office the information at issue pertained to a concluded investigation that did not result in a conviction or deferred adjudication. As noted above, in response to your prior request for a ruling this office issued Open Records Letter No. 2014-07553, which concluded with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. In raising section 552.108(a)(1), you have provided no additional arguments explaining how the information at issue, which you previously described as relating to a concluded case, now relates to an ongoing criminal investigation. Because of your contradictory representations, we conclude you have failed to sufficiently demonstrate the applicability of section 552.108(a)(1) to the submitted information. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Consequently, the department may not now withhold the submitted information under section 552.108(a)(1) of

the Government Code. As you raise no further exceptions to disclosure, the submitted 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 543385

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the submitted information includes a social security number. Section 552.147(b) of the Government Code authorizes a government 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).