



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2009

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2009-00719

Dear Ms. Mapes:

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# 332440.

The City of Killeen (the "city") received a request for two specified offense reports. You state you have released basic information from the two reports. See Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). 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 information you have submitted.

Section 552.108 provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (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)(1)-(2). 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). Subsection 552.108(a)(1) protects information that pertains to a specific criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims 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 Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

In this instance, you state incident report number 06-013102 relates to an investigation that has not been completed. We note, however, incident report number 06-013102 relates to a misdemeanor charge of assault. The event that gave rise to this investigation occurred on October 8, 2006. The statute of limitations for a misdemeanor is two years. *See Crim. Proc. Code art. 12.02.* More than two years has elapsed since the event giving rise to the investigation in incident report number 06-013102. You have not informed this office that any criminal charges were filed within the limitations period in this case. Further, you have not otherwise explained how release of this report would interfere with the detection, investigation, or prosecution of crime. Therefore, the city may not withhold incident report number 06-013102 under section 552.108(a)(1).

Next, you state incident report number 07-017180 pertains to a concluded criminal investigation where charges were not filed. Further, you state incident report number 07-017180 pertains to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. Accordingly, we agree section 552.108(a)(2) is applicable to incident report number 07-017180. Thus, with the exception of basic information, which you state you have released, the city may withhold report number 07-017180 under section 552.108(a)(2).

We note portions of the remaining information are subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note, however, section 552.130 does not apply to out-of-state motor vehicle record information. We have marked the Texas motor vehicle record information the city must withhold under section 552.130 of the Government Code.

In summary, with the exception of basic information, the city may withhold incident report number 07-017180 under section 552.108(a)(2). The city must withhold the Texas motor

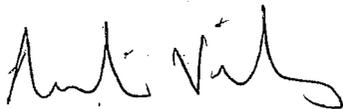
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

vehicle record information we have marked under section 552.130.² The remaining information must be released.³

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.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 at (512) 475-2497.

Sincerely,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eeg

Ref: ID# 332440

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note, however, that the submitted documents contain information that is confidential with respect to the general public. *See* Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the city receives another request for this information from someone other than this requestor, the city must ask this office for a decision whether the information is subject to public disclosure.

³We note the submitted information 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 under the Act. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b).