



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2009

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

OR2009-01164

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# 333681.

The City of Killeen (the "city") received a request for information pertaining to a named officer's calls for service during a specified time period, including any incident reports or videos. You state that the city has released some of the requested information to the requestor. You claim that portions of the submitted information are 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.

You claim that the information you have marked in call for service report number 8114909 is confidential under the doctrine of common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We agree that some of the information you have marked is highly intimate and embarrassing and of no legitimate public interest. This information, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information that you have marked is not intimate and embarrassing and may not be withheld under section 552.101 in conjunction with common-law privacy. As you raise no other exceptions against the disclosure of this information, it must be released.

Next, you contend that the submitted video of a traffic stop is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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). Generally, 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 that the submitted video relates to a pending criminal prosecution. Based upon your representation and our review, we conclude that the release of the submitted video 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), writ ref’d n.r.e., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, the city may withhold the submitted video under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the information we have marked in call for service report number 8114909 under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the submitted video under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 333681

Enc. Submitted documents

cc: Requestor
(w/o enclosures)