



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2009

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

OR2009-04326

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# 338793 (City of Killeen ID# W00406).

The Killeen Police Department (the "department") received a request for all calls and reports related to a specified business over a specified time period. You state that you have released portions of the requested information. You claim that 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.

We must first address the applicability of section 552.007 of the Government Code to the submitted information. Section 552.007 provides that 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).* Based on correspondence to our office<sup>1</sup>, it appears that the department has already released some or all

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<sup>1</sup>The correspondence at issue concerned a withdrawal of a ruling request you submitted to this office with the city reference number W398, and which this office assigned identification number 338735-09.

of incident report number 08-016705 to another requestor. Section 552.108 is a discretionary exception under the Act and does not make information confidential under law or expressly prohibit its release for purposes of section 552.007. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, to the extent report number 08-016705 has already been released to any member of the public, the department may not now withhold that information under section 552.108 of the Government Code. However, this report contains information excepted from disclosure under sections 552.130 and 552.147 of the Government Code.<sup>2</sup> Therefore, we will address these exceptions for report number 08-016705.

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and registration information. Gov't Code § 552.130. Accordingly, the department must withhold the Texas driver's license information we have marked in report number 08-016705 under section 552.130 of the Government Code.

Next, section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>3</sup> Gov't Code § 552.147(a). Accordingly, the department may withhold the social security numbers in report number 08-016705 pursuant to section 552.147 of the Government Code.

We will now address your arguments under section 552.108 of the Government Code in regard to the remaining information that has not already been released to a member of the public. 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). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked "pending investigation" relates to investigations conducted by the department that have not been completed. You further state that release of this information would hinder the department's ability to conduct thorough investigations. Additionally, you inform us that the Bell County District Attorney objects to the release of the information you have marked "pending prosecution" because its release would interfere with open and pending prosecutions. Based on your representations and our review of the

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that 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.

information at issue, we conclude that the release of the information you have marked "pending investigation" and "pending prosecution" 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 [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Next, you claim the information you have marked "no charges" is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the information you have marked relates to concluded investigations conducted by the department. You further state that the department has made no arrests and does not anticipate filing any charges in the cases you have marked. Based on your representations and our review, we conclude that section 552.108(a)(2) is applicable to the information you have marked "no charges".

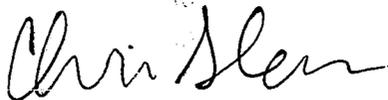
However, as you acknowledge, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state you have released, the department may withhold the remaining submitted information under sections 552.108(a)(1) and 552.108(a)(2).

In summary, (1) the department must withhold the Texas driver's license information we have marked in report number 08-016705 under section 552.130 of the Government Code; (2) the department may withhold the social security numbers in report number 08-016705 pursuant to section 552.147 of the Government Code; (3) to the extent the remaining information in report number 08-016705 has already been released to any member of the public, the department must release that information pursuant to section 552.007 of the Government Code; and (4) with the exception of basic information, the department may withhold the remaining submitted information under sections 552.108(a)(1) and 552.108(a)(2).

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](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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 338793

Enc. Submitted documents

c: Requestor  
(w/o enclosures)