



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2012

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

OR2012-01107

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# 443310 (Killeen ORR No. W006730).

The Killeen Police Department (the "department") received a request for information pertaining to two specified arrests. 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.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information relating to police report 11-012223 includes court filed documents subject to section 552.022(a)(17). The department must release this information, which we have marked, unless it is expressly confidential under

other law. Although you seek to withhold these records under section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interest and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court filed documents under section 552.108 of the Government Code. We note, however, the court filed documents contain information subject to section 552.130 of the Government Code. Because section 552.130 does make information confidential, we will address its applicability to the information subject to section 552.022.<sup>1</sup>

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Therefore, in releasing the court filed documents pursuant to section 552.022(a)(17), the department must withhold the driver's license number we have marked under section 552.130(a)(1).<sup>2</sup>

You seek to withhold the remaining information under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the investigation related to police report 11-012223 is still open and pending. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of police report 11-012223 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).

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note that the court filed documents contain a social security number. 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.

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. You state police report 09-013354 pertains to a case that has concluded and did not result in a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to police report 09-013354.

As you acknowledge, section 552.108 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." Thus, with the exception of the basic front page offense and arrest information, which you state you have released, you may withhold police report 11-012223 under section 552.108(a)(1) of the Government Code and police report 09-013354 under section 552.108(a)(2) of the Government Code.

In this instance, however, the requestor may have a right of access to some of the submitted information. Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] any criminal history record information maintained by the [DPS] about a person." Gov't Code § 411.089(a). Additionally, section 411.087(a) of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). "Criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

The submitted documents contain "criminal history record information." However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, if the requestor in this instance is a "criminal justice agency," then she

is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2).

A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]" *Id.* § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information." Crim. Proc. Code art. 60.01(1).

The department received the instant request for information from a Company Commander in the United States Army. Although it appears that the requestor is engaged in the administration of criminal justice, for the purposes of chapter 411 of the Government Code, it is not clear whether the requestor intends to use the criminal history record information for a criminal justice purpose. Nevertheless, we conclude that if the department determines that the requestor intends to use the criminal history record information for a criminal justice purpose, then the department must make available to the requestor, from the documents that are otherwise subject to section 552.108 of the Government Code, the criminal history record information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that event, the department may withhold the remaining information under sections 552.108(a)(1) and 552.108(a)(2), except for basic information under section 552.108(c). But if the department determines that the requestor does not intend to use the criminal history record information for a criminal justice purpose, then all of the submitted information may be withheld under sections 552.108(a)(1) and 552.108(a)(2), except for basic information. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision No. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

In summary, the department must release the court filed documents subject to section 552.22(a)(17), which we have marked. However, in releasing the court filed documents, the department must withhold the driver's license number we have marked under section 552.130. The department may withhold police report 11-012223 under section 552.108(a)(1) and police report 09-013354 under section 552.108(a)(2), but must release basic information

from both reports pursuant to section 552.108(c). If the department determines that the requestor intends to use the criminal history record information in the submitted documents for a criminal justice purpose, then the department must also release the criminal history record information 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](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, toll free at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/sdk

Ref: ID# 443310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)