



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2013

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

OR2013-14297

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# 496436 (Killeen ID# W010754).

The City of Killeen (the "city") received two requests for information pertaining to a specified police report. You state the city has released some of the requested information. You claim the submitted information is 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.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-09847 (2013). In Open Records Letter No. 2013-09847, we concluded, except for the information we marked to be withheld under section 552.130 of the Government Code, the city must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code and with the exception of the basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed as to the information subject to section 552.130, the city must continue to rely on Open Records Letter No. 2013-09847 with respect to the information subject to section 552.130 as a previous determination and withhold the information at issue in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the criminal case at issue is no longer pending. Thus, we find the

circumstances have changed regarding the information previously withheld under section 552.108, and the city may not rely on Open Records Letter No. 2013-09847 as a previous determination as to the information previously withheld under section 552.108. *See* ORD 673 (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 that information is or is not excepted from disclosure).

We note section 552.007 of the Government Code provides 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). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. You seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Because the purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Further, you also raise section 552.108, which may be waived. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). The common-law informer's privilege and section 552.108 do not prohibit the release of information or make information confidential. Thus, to the extent any portion of the submitted information was previously released in accordance with Open Records Letter No. 2013-09847, the city may not now withhold such information under section 552.108 or section 552.101 in conjunction with the common-law informer's privilege. However, we will address your arguments under these exceptions for the information that was not released in accordance with Open Records Letter No. 2013-09847.

Next, we address your argument under section 552.108 of the Government Code for the information not previously ordered released in Open Records Letter No. 2013-09847. 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 the requested information relates to a criminal investigation that 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 the information at issue relates to a concluded case that did not result in a

conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the information at issue.¹

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *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). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information does not include the identities of victims, witnesses, or other involved parties, but does include the identities of complainants. Thus, with the exception of basic information, the city may withhold the information not previously ordered released in Open Records Letter No. 2013-09847 under section 552.108(a)(2) of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2013-09847 with respect to the information subject to section 552.130 of the Government Code as a previous determination and withhold the information at issue in accordance with that ruling. With the exception of basic information, the city may withhold the information not previously ordered released in Open Records Letter No. 2013-09847 under section 552.108(a)(2) of the Government Code. The remaining information must be released.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 496436

Enc. Submitted documents

c: Requestor
(w/o enclosures)