



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

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

OR2015-25378

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# 589364 (Killeen ID No. W017296).

The Killeen Police Department (the "department") received a request for a listing of specified categories of information related to all incidents of officer-involved shootings over a specified period of time. You state you have released some information to the requestor. 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 submitted representative sample of information.¹

Initially, we note the department states it does not maintain a listing of the specified information. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the department has made a good faith effort to locate any information responsive to this request. Accordingly, we will address your claimed exception to disclosure of the submitted information.

Next, we note the requestor seeks only the specified categories of information related to the incidents at issue. The submitted documents contain information beyond the specified categories. To the extent the submitting information does not consist of the specified categories of information requested, it is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information and the department need not release nonresponsive information in response to this request.

Section 552.108(a)(1) of the Government Code 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 incident report numbers 14-005549 and 14-010186 pertain to pending prosecutions with the Bell County District Attorney’s Office (the “district attorney’s office”) and the district attorney’s office objects to the release of this information. Based upon these representations and our review, we conclude that the release of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the responsive information in incident report numbers 14-005549 and 14-010186.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report numbers 12-002661, 13-008367, and 14-004022 pertain to investigations that concluded in results other than conviction or deferred adjudication. Therefore, we find section 552.108(a)(2) is applicable to the responsive information in incident report numbers 12-002661, 13-008367, and 14-004022.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8;

see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the name, race, sex, age, and physical condition of the arrestee, the date and location of the crime, and the name of the arresting and investigating officers. *See* ORD 127 at 3-4. Thus, with the exception of basic information, which must be released, the department may withhold the responsive information in incident report numbers 14-005549 and 14-010186 under section 552.108(a)(1) of the Government Code and may withhold the responsive information in incident report numbers 12-002661, 13-008367, and 14-004022 under section 552.108(a)(2) of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold the responsive information in incident report numbers 14-005549 and 14-010186 under section 552.108(a)(1) of the Government Code. With the exception of basic information, which must be released, the department may withhold the responsive information in incident report numbers 12-002661, 13-008367, and 14-004022 under section 552.108(a)(2) of the Government Code.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 589364

Enc. Submitted documents

c: Requestor
(w/o enclosures)