



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2016

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

OR2016-00457

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# 599842 (Killeen ID# W018013).

The City of Killeen (the "city") received a request for information pertaining to a specified case. You state the city released some information. 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 information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-24920 (2015). In that previous ruling, we concluded the department must release a document if it was filed with a court pursuant to section 552.022(a)(17) of the Government Code and, with the exception of basic information, which we also ordered released, the city may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). You seek to withhold, under

section 552.108 of the Government Code, the court-filed document and basic information which we previously determined had to be released. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, the city may not now withhold this information under section 552.108. As you raise no further exceptions to disclosure for this information, the city must release it. Furthermore, while the remaining information at issue in that ruling previously was an open investigation subject to section 552.108(a)(1) of the Government Code, you now claim section 552.108(a)(2) for the information, which pertains to a concluded investigation. Thus, we find the circumstances have changed and the city may not rely on Open Records Letter No. 2015-24920 as a previous determination in this instance. However, we will consider your argument under section 552.108 of the Government Code for the information the city has not previously released.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information pertains to a concluded investigation. You state the city does not anticipate filing any charges in this investigation in the future. You further state the investigation did not result in a conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the remaining information. Accordingly, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

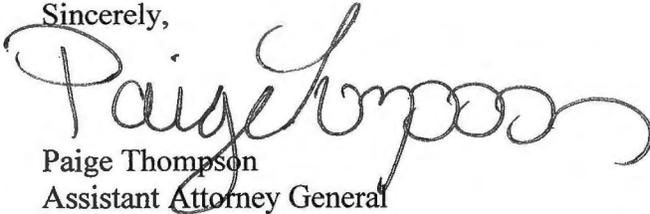
In summary, the city must release the information this office determined must be released in Open Records Letter No. 2015-24920. The city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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,

A handwritten signature in cursive script that reads "Paige Thompson". The signature is written in black ink and is positioned above the typed name and title.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 599842

Enc. Submitted documents

c: Requestor
(w/o enclosures)