



August 11, 1999

Mr. Keith Stretcher
City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-2289

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128118.

The City of Midland (the "city") received a request for a certain police report. You claim that the requested information is excepted from disclosure under sections 552.108(a)(2) and 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

* * *

(2) 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[.]

* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108.

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 inform us that the information relates to an investigation that did not result in a conviction or deferred adjudication. We find that you may withhold this information under section 552.108(a)(2) of the Government Code.

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g 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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); see Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

You claim that even the basic front page offense report information should not be released pursuant to section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

First, you allege that the driver's license number of the complainant should not be released pursuant to section 552.130 of the Government Code. Driver's license numbers are not typically considered basic front page offense report information. You may withhold this information pursuant to section 552.108.

Next, you seek to withhold the identity of the complainant pursuant to the informer's privilege. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege does not categorically protect from release the identification and description of a complainant, which is front page offense report information generally considered public by *Houston Chronicle*. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover

operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976).

Based upon the information provided to this office, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to the complainant's identity. Consequently, we conclude that the city must release the relevant front-page report information. We note that the complainant's telephone number and address are generally not front page offense report information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sue M. Lee
Assistant Attorney General
Open Records Division

SML\nc

Ref: ID# 128118

encl: Submitted documents

cc: Mr. Horatio Garcia
100 East Wall
Midland, Texas 78701-9998
(w/o enclosures)