



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2005

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitrullo LLP
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2005-07007

Dear Mr. Noga:

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# 229701.

The City of Coppell (the "city"), which you represent, received a request for all offense reports pertaining to a particular address during a certain time period. You claim that 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.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by statute. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. We note, however, that section 58.007 does not apply where the information in question involves only a juvenile complainant or witness and not a juvenile suspect or offender. You have failed to explain, and we are unable to determine, that the submitted information involves a juvenile suspect or offender. Accordingly, we cannot conclude that the submitted information is subject to section 58.007 of the Family Code.

However, you also claim that the submitted information is subject to section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree that section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. See Gov’t Code § 552.108(c), *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). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. See 531 S.W.2d at 186-87. Thus, the city must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Basic information includes the identification and description of the complainant. See *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). You contend, however, that in this instance information identifying the complainant is protected from disclosure under section 552.101 of the Government Code in conjunction with the informer’s privilege.

The common-law informer’s privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided

that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The informer's privilege does not, however, apply to information that does not describe alleged illegal conduct. Open Records Decision No. 515 at 5 (1988). In addition, the privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You indicate that the complainant reported an alleged crime to the city police department. Based on your representations and our review, we agree that information identifying the complainant in this case is protected by the informer's privilege. Accordingly, the city may withhold such information under section 552.101.

In summary, with the exception of basic information, the city may withhold the submitted records pursuant to section 552.108(a)(2) of the Government Code. Basic information that identifies the complainant is protected by the informer's privilege in this instance and may be withheld under section 552.101 of the Government Code. The remainder of the basic information at issue must be released to the requestor.

We note that the city has the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

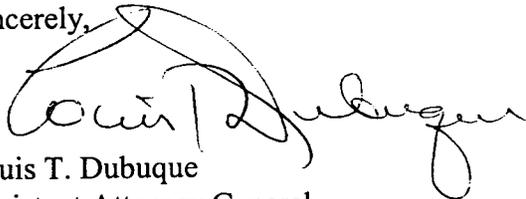
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 229701

Enc. Submitted documents

c: Ms. Beth Young
400 Kyle
Irving, Texas 75019
(w/o enclosures)