



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2009

Ms. Patricia A. Adams
Town Attorney
Town of Trophy Club
100 Municipal Drive
Trophy Club, Texas 76262

OR2009-00718

Dear Ms. Adams:

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# 332358.

The Town of Trophy Club (the "town") received a request for a specified police report. You state that you are releasing some of the requested information. You claim that portions of the submitted information are 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 552.108(a)(1) 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 that the submitted incident report relates to a pending criminal prosecution. Based upon your representation and our review, we conclude that the release of the submitted report 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), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law

enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the submitted report.

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*, and includes, among other things, the identification and description of the complainant and "a detailed description of the offense." 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*). You seek to withhold the narrative portion of the submitted report under section 552.108. The town must release a sufficient portion of the narrative section of the submitted report to encompass a detailed description of the offense. We note that the identification and description of witnesses, however, are protected under section 552.108(a)(1) and may be withheld under that section.¹ *Id.* The submitted report does contain the identity of a complainant that would generally be subject to release as basic information. You contend, however, that the identity of the complainant is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The 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). It 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 informer's 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).

You inform us that the submitted report contain the identifying information of an individual who reported possible criminal violations to the police services division of the town's department of public safety, which is responsible for enforcing the laws at issue. You have identified the specific laws alleged to have been violated. Based on your representations and our review, we conclude that the town may withhold the identifying information of the

¹As our ruling is dispositive as to the witness information, we need not address your remaining argument against the disclosure of the identity of the witness.

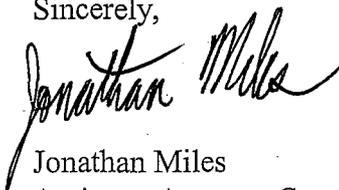
complainant from the basic information in the submitted reports, which you have marked, pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of basic information which must be released, which includes a detailed description of the offense, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information from the submitted reports, the city may withhold the identifying information of the complainant, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 332358

Enc. Submitted documents

cc: Requestor
(w/o enclosures)