



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2009

Ms. Martha T. Williams
Olson & Olson L.L.P.
Attorney for City of Friendswood
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-08622

Dear Ms. Williams:

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# 347454.

The City of Friendswood (the "city") received a request for information regarding an incident involving the requestor that took place on April 7, 2009. You state you will release a portion of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why 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 the requested information pertains to a case that is currently being investigated and is pending. Based on this representation, we conclude release of the requested information 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e., per*

curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note and you acknowledge section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). A complainant's identification is considered basic information and is not excepted from disclosure by section 552.108.

However, you claim the identity of the complainant is protected by 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. This section encompasses information protected by the informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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. See Open Records Decision Nos. 515 at 3 (1998), 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). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. See *Roviaro v. United States*, 353 U.S. 53, 60 (1957); Open Records Decision No. 549 at 5 (1990). The submitted information relates to a report of alleged criminal activity made to a law enforcement agency. We have marked information that tends to identify the person who reported the alleged criminal activity and we agree this information is protected by section 552.101 in conjunction with the common-law informer's privilege.

Thus, with the exception of basic information, the city may withhold the requested information under section 552.108(a)(1) of the Government Code. The city may withhold the information we have marked under section 552.101 of the Government Code in

conjunction with the common-law informer's privilege. The remaining basic information must be released.¹

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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 347454

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note section 552.103 of the Government Code generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).