



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2009

Ms. T. Trisha Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-14813

Dear Ms. Dang:

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# 359787.

The Corpus Christi Police Department (the "department") received a request for nine categories of information regarding a specific vehicle accident. You indicate no responsive information exists with regard to six categories of this request.¹ You state you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108. A governmental body claiming section 552.108 of the Government Code must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.*

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

§§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an active criminal case. Based on this representation, we conclude the release of the information at issue 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, as 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). Basic information refers to the information held to be public in *Houston Chronicle*. We note that basic information includes, among other things, the identity and description of the complainant. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). You contend, however, that the identities of the complainants in this case are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g., 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. *See Open Records Decision No. 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 1-2 (1981). 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 (1988). 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).

The complainants, in this instance, reported an aggravated assault to the department. Upon review, we find that their identities are protected by the common-law informer's privilege. *See Open Records Decision No. 156* (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). We therefore conclude that the department may withhold the identities of the complainants from basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, except for basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department may withhold the identities of the complainants under section 552.101 of the Government Code in conjunction with the informer's privilege. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 359787

Enc. Submitted documents

c: Requestor
(w/o enclosures)