



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
Attorney for Town of Flower Mound
740 East Campbell Road, Suite 800
Richardson, Texas 75801

OR2009-17469

Dear Mr. Griffith:

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# 364309.

The Town of Flower Mound (the "town"), which you represent, received a request for all information regarding any code violations at a specific address. You claim 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 552.108(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). Generally, 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate the submitted information pertains to an ongoing criminal investigation and prosecution involving violations of section 86 of the town's Code of Ordinances. However, we note you have submitted information pertaining to an investigation that does not involve violations of section 86 of the town's Code of Ordinances. You have not informed us how this information relates to the pending investigation and prosecution. Therefore, we find you

have failed to reasonably explain how release of the information not pertaining to alleged violations of section 86 of the town's Code of Ordinances would interfere with law enforcement. Accordingly, the town may not withhold this information pursuant to section 552.108(a)(1) of the Government Code. However, we conclude release of the remaining information, which we have marked, 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that 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 Publishing 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). 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*). The submitted information contains 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).

As previously stated, you inform us the information at issue contains identifying information of a complainant who reported possible violations of section 86 of the town's Code of Ordinances, a violation of which you inform us may result in a criminal penalty. Upon review, we conclude that the town may withhold the information we have marked under section 552.101 in conjunction with the informer's privilege.

In summary, with the exception of basic information, the town may withhold the information we have marked under section 552.108(a)(1) of the Government Code. In releasing basic information from the documents we have marked, the town may withhold the identifying information of the complainant, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 364309

Enc. Submitted documents

cc: Requestor
(w/o enclosures)