



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 7, 2010

Ms. Jenny Gravley
Taylor Olson Adkins Sralla Elam, L.L.P.
For City of Haltom
600 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-00317

Dear Ms. Gravley:

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# 366539.

The Haltom City Police Department (the "department") received a request for information related to a specified incident. You indicate that you will redact a social security number under section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See, 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

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. 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 state that the submitted information relates to a report of an alleged violation of the Texas Penal Code to the department, which is responsible for enforcing violations of the statute at issue. However, the information you have marked under the informer's privilege relates to a witness who did not make the initial report of the alleged violation. Accordingly, the department may not withhold any of the submitted information under section 552.101 in conjunction with the common-law informer's privilege.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); see *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. See, e.g., Open Records Decision Nos. 531 (1989) (detailed use of force guidelines protected, but Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 456 (1987) (information regarding location of off-duty police officers protected), 413 (1984) (sketch showing security measures to be used at next execution protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that the information you have marked under section 552.108(b)(1) "reveals strategies and techniques that are invaluable to law enforcement personnel, such as S.W.A.T. and the release of this information would place an individual at an advantage in confrontation with police, including S.W.A.T, and increase the chance of evading arrest or injuring a law enforcement officer." Upon review of your arguments and the information at issue, we agree that release of the information we have marked under section 552.108(b)(1) would interfere with law enforcement and crime prevention. However, we find you have failed to establish how release of the remaining information you have marked would interfere with law enforcement and crime prevention. Therefore, the department may withhold the information

we have marked under section 552.108(b)(1) of the Government Code, but may not withhold any of the remaining information at issue on this basis.

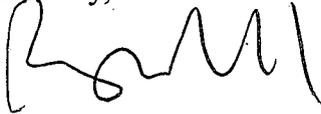
Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). *See id.* § 552.136(a) (defining “access device”). The department must withhold the debit card number you have marked pursuant to section 552.136 of the Government Code.² However, we find that the remaining information you have marked under section 552.136 does not consist of credit card, debit card, charge card, or access device numbers; therefore, the department may not withhold any of the remaining information at issue under section 552.136.

In summary, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code and must withhold the information we have marked under section 552.136 of the Government Code. The department must release the remainder of the submitted information.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/dls

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a debit card number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 366539

Enc. Submitted documents

c: Requestor
(w/o enclosures)