



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 4, 2010

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

OR2010-06379

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# 378278.

The City of Friendswood (the "city"), which you represent, received three requests for information related to three named individuals and two addresses during a particular time period. You state that some responsive information will be released to the requestors. You claim that 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)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.*

§ 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the submitted information pertains to a closed investigation that did not result in a conviction or deferred adjudication. Upon review, we agree section 552.108(a)(2) is applicable to the submitted information.

We note 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 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). However, you seek to withhold some or all of the basic information under section 552.101 of the Government Code.

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. Section 552.101 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); *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. 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); *see* 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 indicate report number 2010-034043 contains the identifying information of a complainant who reported a possible criminal violation to the city's police department. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Based on your representation and our review, we conclude that, in releasing basic information from report number 2010-034043, the city may withhold the complainant's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered highly intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information

relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

We have marked information within the remaining basic information that is highly intimate or embarrassing and of no legitimate public concern. The city must withhold the information we have marked from all three requestors under section 552.101 in conjunction with common-law privacy.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted records reveal that the third requestor knows the identity of the individual involved as well as the nature of the information in report numbers 2009-204773 and 2009-204775. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the remaining basic information in report numbers 2009-204773 and 2009-204775 from the third requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code. The city may also withhold the complainant's identifying information in report number 2010-034043, which we have marked, from all three requestors under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information we have marked in the remaining basic information from all three requestors under section 552.101 in conjunction with common-law privacy. The city must withhold the remaining basic information in report numbers 2009-204773 and 2009-204775 from the third requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released to the other two requestors.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 378278

Enc. Submitted documents

c: Requestors
(w/o enclosures)