



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2010

Mr. Duncan Fox
Deputy General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-06498

Dear Mr. Fox:

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# 378129 (ORA # 10-0378).

The Texas Department of Public Safety (the "department") received a request for all records and correspondence leading up to the department's decision to conduct a compliance review on a named company. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 must reasonably explain how and why the 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 explain that the department is tasked to enforce the commercial motor vehicle safety standards set forth in Chapter 644 of the Transportation Code. A violation of the rules set forth by the department is a criminal offense. *See Transp. Code* § 644.151. You state that the submitted information relates to a pending investigation being conducted under Chapter 644 of the Transportation Code which may result in criminal prosecution. Based on this representation, we conclude that the release of this 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., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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). 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. Such basic information includes a detailed description of the offense and the identity of the complainant. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, the department must release basic information, even if it does not literally appear on the front page of an offense or arrest report. *See id.* You claim, however, that the identifying information of the informant contained within the basic information may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Accordingly, we will address your argument under this exception.

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. You raise section 552.101 in conjunction with the common-law informer’s privilege, which Texas courts have long recognized. *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 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.” *See* 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. The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990). The informer’s privilege does not apply if the subject of the information already knows the informer’s identity. ORD 208 at 1-2.

You state, and the submitted information reflects, that the complainant reported a violation of the Commercial Motor Vehicle safety standards set forth in chapter 644 of the Transportation Code. *See generally* Trans. Code § 644. You further state that violation of a rule set forth in chapter 644 is a Class C misdemeanor. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Thus, based on your representations and our review, we conclude that in releasing basic information, the department may withhold the complainant’s identifying information, which we have marked,

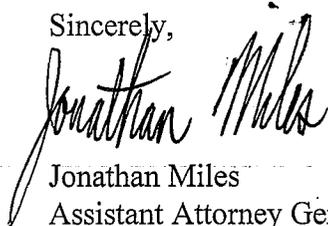
under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code; however, in releasing basic information, the department may withhold the complainant's identifying information, which we have marked, under section 552.101 in conjunction with the common-law informer's privilege. The remaining basic information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 378129

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument for this information.