



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2010

Mr. B. Chase Griffith
Attorney for Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-10693

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# 391919.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to code complaints for a specified address. 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)(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)(1). Generally, a governmental body claiming section 552.108(a)(1) 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 state that the submitted information relates to an open and pending criminal investigation. Based upon your representation and our review, we conclude that the release of the submitted 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law

enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the submitted information

However, 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*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes the identity of the complainant. You claim portions of the basic information are protected by the common-law informer's privilege. The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts.¹ 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).

You assert the basic information contains the identifying information of an individual who reported a possible violation of section 34-71 of the town's Code of Ordinances to the town's code enforcement department, which is responsible for enforcing such violations. You also inform us that the violation at issue is subject to criminal penalties. Based on your representations and our review of the submitted information, we conclude that the town has demonstrated the applicability of the common-law informer's privilege to the information we have marked. Accordingly, the town may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. We note that the remaining basic information does not constitute identifying information of an informer. Therefore, the town may not withhold any of the remaining basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of basic information, the town may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic

¹Section 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.

information, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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,


Laura Ream Lemus

Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 391919

Enc. Submitted documents

c: Requestor
(w/o enclosures)