



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2011-11629

Dear Ms. Monteros:

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# 426761 (County Attorney File No. 2011-208).

The El Paso County District Attorney's Office (the "district attorney") received a request for all records pertaining to cause numbers 20110C0008, 20100C13513, 20100C13357, 20100C02768, 20100C02554, 20100D04818, 20100D04654, 20100D04149 and 20020D03456 and a named individual. You inform this office the district attorney does not have any information pertaining to cause number 20020D03456 and the named individual.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.130, and 552.147 of the Government

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from public 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 other statutes. Section 58.007 of the Family Code provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Upon review, we find the submitted information pertaining to cause number 20100C02768 involves children suspected of delinquent conduct. Thus, we find the district attorney must withhold the information pertaining to cause number 20100C02768 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Although you generally claim the remaining information is confidential pursuant to section 58.007, upon review this information does not identify any criminal suspects between the ages of ten and sixteen. Therefore, we conclude none of the remaining information is confidential under section 58.007, it may be withheld under section 552.101 on that basis.

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). You provide a letter to this office representing cause numbers 20110C0008, 20100C13513, 20100C13357, 20100C02554, 20100D04818, 20100D04654, and 20100D04149 are active cases under prosecution by the Office of the District Attorney for the 34th Judicial District. The letter further states disclosure of the submitted information at this time would interfere with those prosecutions. Based on this representation and our review, we conclude that the release of the remaining information at this time 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to the information pertaining to cause numbers 20110C0008, 20100C13513, 20100C13357, 20100C02554, 20100D04818, 20100D04654, and 20100D04149.

Section 552.108, however, 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. Basic information, including the identity and description of the complainant, may not be withheld under section 552.108, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include Texas motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the district attorney may withhold the information pertaining to cause numbers 20110C0008, 20100C13513, 20100C13357, 20100C02554, 20100D04818, 20100D04654, 20100D04149 under section 552.108(a)(1) of the Government Code.³

You claim the complainants’ identities are confidential under the informer’s privilege, which is also encompassed by section 552.101 of the Government Code. The common-law

³As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code, section 552.103 of the Government Code, section 552.107 of the Government Code, or section 552.130 of the Government Code except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

informer's privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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. However, individuals 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).

In this instance, the submitted information reveals the complainants at issue reported various crimes to investigating officers. We understand the reported conduct constitutes violations of law that carry criminal or civil penalties. We have no indication the subjects of the complaints know the identities of the reporting parties. Thus, in releasing basic information from the information pertaining to cause numbers 20110C0008, 20100C13513, 20100C13357, 20100C02554, 20100D04818, 20100D04654, and 20100D04149 the district attorney may withhold the complainants' identifying information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the district attorney must withhold the information pertaining to case number 20100C02768 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the district attorney may withhold the remaining submitted information pertaining to cause numbers 20110C0008, 20100C13513, 20100C13357, 20100C02554, 20100D04818, 20100D04654, 20100D04149 under section 552.108(a)(1) of the Government Code. In releasing basic information, the district attorney may withhold the complainants' identities under section 552.101 of the Government Code in conjunction with the informer's privilege. The remaining basic information must be released.⁴

⁴Although basic information includes an arrestee's social security number, 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. Gov't Code § 552.147(b).

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 426761

Enc. Submitted documents

c: Requestor
(w/o enclosures)