



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2012

Mr. J. Frank Davis  
Assistant District Attorney  
Hays County  
111 East San Antonio Street, Suite 204  
San Marcos, Texas 78666

OR2012-00272

Dear Mr. Davis:

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# 441581.

The Hays County Sheriff’s Office (the “sheriff”) received a request from two requestors for all police reports that occurred (1) at a specified address between September 1, 2009 and October 14, 2011; and (2) at three different specified addresses between December 1, 2009 and the present. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 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). You state, and have provided an affidavit from the Hays County Criminal District Attorney confirming, release of the submitted information would interfere with pending criminal cases. Based on your representations and the affidavit, we conclude section 552.108(a)(1) is applicable in this instance. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff must release basic information, including a detailed description of the offense and the identity of the complainant, even if the information does not literally appear on the front page of an offense or arrest report. Accordingly, except for basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. We understand you to raise section 552.101 for a portion of the basic information.<sup>1</sup> Therefore, we will consider your arguments under section 552.101 of the Government Code.

You claim section 552.101 of the Government Code for portions of the basic information. 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. Section 552.101 of the Government Code encompasses information protected by the common-law 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). 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 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 (1988). 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).

You generally seek to withhold the identities of all the reporting parties in the submitted information. Upon review, we find the information we have marked identifies the reporting parties in investigations into violations of the state’s criminal statutes. Accordingly, the sheriff may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, you have not explained how the remaining information you seek to withhold pertains to the

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<sup>1</sup>We note that you claim the informer’s privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held that the Texas Rules of Evidence are “other law” within the meaning of section 552.022 of the Government Code. See *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). In this instance, however, section 552.022 is not applicable. Therefore, we will address your arguments under the common-law informer’s privilege.

identities of reporting parties who reported violations of a criminal or civil statute. Accordingly, we conclude you have failed to establish the informer's privilege is applicable to the remaining information at issue, and the sheriff may not withhold any of the remaining basic information under section 552.101 on that basis.

In summary, except for basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. The sheriff may withhold the information we have marked under section 552.101 of the Government Code 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](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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 441581

Enc. Submitted documents

c: Requestor  
(w/o enclosures)