



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2012

Ms. Valeria M. Acevedo  
City Attorney  
City of New Braunfels  
P.O. Box 311747  
New Braunfels, Texas 78131

OR2012-02865

Dear Ms. Acevedo:

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# 446415 (New Braunfels ORR Nos. 2011-335 & 2011-336).

The City of New Braunfels (the "city") received two requests from the same requestor for all e-mail correspondence to or from two named individuals. You state you have released most of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically consents to the redaction of social security numbers, driver's license numbers, home addresses, personal phone numbers, and e-mail addresses. Thus, this information, which you have redacted, is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

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,

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). 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 state the submitted information relates to an open and pending criminal investigation. Based upon your representation and our review, we conclude that 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) (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 applicable to the submitted information.

We note, however, 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*. *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*). We note that basic information includes, among other items, an identification and description of the complainant and a detailed description of the offense, but does not include identifying information of a witness or of a victim, unless the victim is also the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic front page offense and arrest information, the city may withhold the submitted report based on section 552.108(a)(1) of the Government Code.

You contend portions of the basic information are protected under the informer’s privilege. 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. This exception 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); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The 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 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.

You state the basic information reveals the identity of a complainant who reported possible cyber crime violations to the city’s police department. You state the city’s police department is responsible for enforcing these laws. Further, you state that a violation of the laws at issue is punishable by criminal penalties. You also inform us that you have no indication the

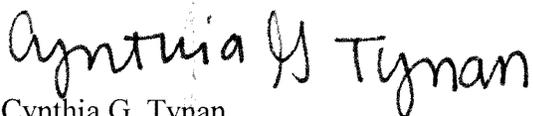
subject of the complaint knows the identity of the complainant. Therefore, based on your representations and our review, we conclude the city may withhold the complainant's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law).

In summary, with the exception of basic information, the city may withhold the submitted information based on section 552.108(a)(1) of the Government Code. However, in releasing basic information 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.

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/ag

Ref: ID# 446415

Enc. Submitted documents

c: Requestor  
(w/o enclosures)