



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2012

Ms. Elizabeth L. White
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2012-04538

Dear Ms. White:

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# 448951 (Ref. No. W001163-011212).

The City of Friendswood (the “city”), which you represent, received a request for “any complaint documents filed against [city] police officers” related to a specified incident. You state the city will redact motor vehicle record information as permitted by section 552.130(c) of the Government Code.¹ You also state you have redacted a social security number under section 552.147 of the Government Code.² You claim that the remaining requested

¹Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov’t Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 (2009) permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. However, we note any other information made confidential by section 552.130(a)(2), such as vehicle identification numbers, is not subject to section 552.130(c) or Open Records Decision No. 684 and, therefore, may not be withheld without requesting a decision from this office.

²Section 552.147 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).

information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.130 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

You state, and have provided a representation from the city’s police department (the “department”) confirming, that the information in Exhibits A and B relates to an ongoing criminal case and that release of this information would interfere with the criminal case. You and the department further represent that the internal affairs file, Exhibits C and C1, pertains to the same incident that is the subject of the pending criminal case and contend that release of the submitted internal affairs file would interfere with the investigation or prosecution of crime. Based on these representations we find that release of the submitted information in Exhibits A, B, C, and C1 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 that 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. We note that basic information includes a detailed description of the offense, but does not include the identity of a victim or witnesses, nor does it include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We also note a complainant’s home address and telephone number

³Although you also raise section 552.023 of the Government Code, we note that section is not an exception to disclosure under subchapter C of the Act. *See* Gov’t Code § 552.023.

are generally not considered basic information unless the address is the location of the crime, the place of arrest, or the premises involved. ORD 127 at 4 (stating only identity and description of the complainant are available to the public). Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.⁴

However, we understand you to claim that the identifying information of the complainant 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. 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. The common-law informer's privilege, incorporated into the Act by section 552.101, 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). This 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). It 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 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 an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You assert that the basic information reveals the identity of a person reporting a violation of the law to the department. The submitted information indicates that the violation at issue carries criminal penalties. We therefore conclude that the city may withhold the identity of the complainant from basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining basic information, however, does not identify the complainant, and the city may not withhold it under section 552.101 in conjunction with the common-law informer's privilege.

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

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

information, the city may withhold the identity of the complainant under section 552.101 of the Government Code in conjunction with the informer's privilege.⁵

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 448951

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).