



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 21, 2012

Mr. David H. Guerra  
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P.O. Box 1025  
Mission, Texas 78573-0017

OR2012-07579

Dear Mr. Guerra:

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# 454271.

The City of Mission (the "city"), which you represent, received a request for (1) the cellular telephone records of a named individual from his employer-issued cellular telephone during a specified period of time, and (2) specified applications for search or arrest warrants and the accompanying affidavits that relate to a specified incident involving a named individual. You claim 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the requested affidavits are court filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record [,]" unless the information is made confidential under the Act or other law. *Id.* 552.022(a)(17). However, upon review, we find no portion of the submitted information is subject to section 552.022(a)(17).

Next, we address the requestor's assertion the requested affidavits are expressly public pursuant to article 15.26 of the Code of Criminal Procedure. Article 15.26 of the Code of Criminal Procedure provides in relevant part:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 15.26. Thus, we interpret article 15.26 of the Code of Criminal Procedure to apply only to court clerks. Accordingly, we find that article 15.26 does not make the submitted affidavits maintained by the city expressly public.

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.

The city states the submitted telephone records contain the identifying information of several informants. However, you also state it is unknown by the city which calls are from the informants. Further, you have not identified, and we are unable to discern, which individuals, if any, reported a violation of any criminal or civil statute, nor have you explained whether any violation carries civil or criminal penalties. Thus, we conclude the city has not demonstrated the applicability of the common-law informer's privilege to any portion of the information at issue and no portion of it may be withheld under section 552.101 of the Government Code on that basis.

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 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 affidavits relate to an ongoing criminal investigation by the city police department.

Based on your representation and our review, we conclude release of the submitted affidavits 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, you may withhold the submitted affidavits under section 552.108(a)(1).

Section 552.136(b) of the Government Code provides in part, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”<sup>1</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the city must withhold the cellular telephone account numbers, a representative sample of which we have marked, under section 552.136 of the Government Code.

In summary, the city may withhold the submitted affidavits under section 552.108(a)(1) of the Government Code. The city must withhold the cellular telephone account numbers, a representative sample of which we have marked, under section 552.136 of the Government Code. The remaining 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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/em

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 454271

Enc. Submitted documents

c: Requestor  
(w/o enclosures)