



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2012

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

OR2012-09047

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# 455935 (City Ref. No. PIR 1930 K. Schulte; Ross Banks File No. 3607-1)

The League City Police Department (the "department"), which you represent, received a request for a police report pertaining to a specified incident. You state the department will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state, and have provided information confirming, the submitted information pertains to a concluded case that did not result in a conviction or deferred adjudication. Based on these representations, we agree that section 552.108(a)(2) is applicable to the submitted information.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic

¹Although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. *See* Gov't Code § 552.023.

information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) and includes a detailed description of the offense and the identity of the complainant. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. In addition, we note the submitted information includes an event report. In Open Records Decision No. 649 (1996), this office concluded information contained in a computer-assisted dispatch (“CAD”) report is substantially the same as basic information. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Accordingly, with the exception of basic information, which you state you have released, the department may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code.²

However, we understand you to claim a portion of the basic information is protected under section 552.101 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 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 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 the basic information reveals the identity of an individual who reported a violation of the law to the department. The submitted information indicates the violation at issue carries criminal penalties. We therefore conclude the department may withhold the identifying information we have marked 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 an individual who reported a violation of the

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

law, and the department may not withhold it under section 552.101 in conjunction with the common-law informer's privilege.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Although you raise section 552.101 in conjunction with common-law privacy for the remaining basic information, upon review, we find none of the remaining information at issue is highly intimate or embarrassing and a matter of no legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the 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, 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long, sweeping horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 455935

Enc. Submitted documents

c: Requestor
(w/o enclosures)