



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

Ms. Jennafer G. Tallant
Counsel for the City of Live Oak
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2012-11100

Dear Ms. Tallant:

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# 460523.

The Live Oak Police Department (the "department"), which you represent, received a request for information related to a specified incident involving a named individual, including the police report and any documents signed by the individual. You claim some of the requested 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 information you submitted.

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 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). We understand you to claim section 552.108(a)(1) for the documents and portions of documents you have marked to be withheld under section 552.108. You state, and have provided correspondence from the Bexar County District Attorney's Office confirming, release of the

¹Although you do not specifically claim section 552.130 of the Government Code, you have marked information the department seeks to withhold on that basis. Accordingly, we will address section 552.130, which is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

marked information would interfere with a pending criminal investigation and prosecution. Based on your representations and documentation, we conclude section 552.108(a)(1) is generally applicable to the marked information. 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 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes an identification and description of the complainant and a detailed description of the offense but does not include information related to witnesses or motor vehicle information.

We understand you to claim some of the basic information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the common-law informer’s privilege, which Texas courts have long recognized. 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 (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.” 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. 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 claim the informer’s privilege for information that identifies the complainant. We have marked the basic information that may be withheld on that basis under section 552.101 of the Government Code. We conclude the remaining basic information does not identify the complainant and may not be withheld on the basis of the common-law informer’s privilege under section 552.101.

We also understand you to claim section 552.101 of the Government Code in conjunction with the common-law physical safety exception. For many years, this office held section 552.101, in conjunction with the common-law right to privacy, protected information from disclosure when “special circumstances” existed such that disclosure of the information would place an individual in imminent danger of physical harm. See, e.g., Open Records Decision Nos. 169 (1977) (special circumstances required to protect information must be

more than mere desire for privacy or generalized fear of harassment or retribution), 123 (1976) (information protected by common-law right of privacy if disclosure presents tangible physical danger). The Texas Supreme Court has held, however, that freedom from physical harm does not fall under the common-law right to privacy. *See Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, LLC*, 343 S.W.3d 112 (Tex. 2011) (“freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). Instead, in *Cox*, the court recognized, for the first time, a separate common-law physical safety exception to required disclosure that exists independent of the common-law right to privacy. *Id.* at 118. Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned that “vague assertions of risk will not carry the day.” *Id.* at 119. We conclude you have not sufficiently demonstrated that a substantial risk of physical harm would result from the disclosure of any of the remaining information at issue. We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

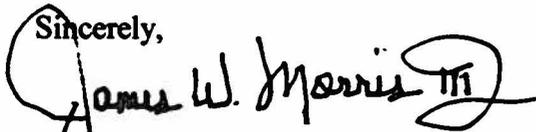
Lastly, section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov’t Code* § 552.130(a)(1)-(2). We have marked driver’s license and motor vehicle information the department must withhold under section 552.130.

In summary, the department (1) may withhold the information you have marked under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c), which must be released; (2) in releasing basic information, may withhold the information we have marked that identifies the complainant under section 552.101 of the Government Code in conjunction with the informer’s privilege; and (3) must withhold the driver’s license and motor vehicle information we have marked under section 552.130 of the Government Code. The department must release the rest of the submitted information.²

²We note the remaining information includes the requestor’s client’s driver’s license number, which the department would be required to withhold from the general public under section 552.130 of the Government Code. But because section 52.130 protects personal privacy, the request has a right of access to his client’s driver’s license number under section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). We also note section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *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 notice to requestor). Thus, if the department receives another request for the same records from a person who would not have a right to the requestor’s client’s private information, section 552.130(c) authorizes the department to redact the client’s driver’s license number without the necessity of requesting another ruling.

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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 460523

Enc: Submitted documents

c: Requestor
(w/o enclosures)