



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 19, 2012

Ms. Elizabeth L. White  
Counsel for the City of League City  
Ross, Banks, May, Cron, & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2012-11235

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# 459413 (PIR # 1986-J).

The League City Police Department (the "department"), which you represent, received a request for information pertaining to complaints made by and against the requestor's client, information about the arrest of the requestor's client, and specified department policies. You state you have released some of the requested information. You also state some of the requested information does not exist.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304

---

<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio, 1978, writ dismissed); Open Records Decision Nos. 605 at 3 (1992), 452 at 3 (1986).

<sup>2</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(interested party may submit written comments regarding availability of requested information).

Section 552.108(a)(1) 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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit A relates to an open criminal investigation. Based upon your representation and our review, we conclude release of the information you have marked will 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). Accordingly, we find the department may generally withhold the information you have marked in Exhibit A under section 552.108(a)(1) of the Government Code.

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 Exhibit B pertains to concluded cases that did not result in convictions or deferred adjudication. Based on these representations, we agree that section 552.108(a)(2) is applicable to the information you have marked in Exhibit B.

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 information refers to the 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 and identity of the complainant, but does not include the identity of a witness or of a victim, unless the victim is also the complainant. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the submitted information includes event reports. 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, the department may withhold the information you have marked in Exhibit A under subsection 552.108(a)(1) of the

Government Code and the information you have marked in Exhibit B pursuant to subsection 552.108(a)(2) of the Government Code.<sup>3</sup>

However, we understand you to claim the basic information is protected 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 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 identities of individuals who reported violations of the law to the department. The submitted information indicates the violations at issue carry 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 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

---

<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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 basic information under section 552.101 in conjunction with common-law privacy.

Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor ... maintained for internal use in matters relating to law enforcement or prosecution ... if ... release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) of the Government Code is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (release of dates of prison transfer could impair security), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You represent the submitted information in Exhibit C pertains to department guidelines regarding methods of arrest of suspects and investigative techniques. You assert release of the information at issue will interfere with law enforcement by divulging internal techniques for preventing and detecting crime. Further, you state release of the information at issue will reveal law enforcement tactical strategies. You indicate release of the marked information will compromise officer safety and affect the ability of the department to detect and deter

criminal activity. Upon review of your arguments and the information at issue, we find the department has demonstrated that release of the marked information would interfere with law enforcement. Therefore, the department may withhold the information we have marked in Exhibit C under section 552.108(b)(1) of the Government Code. However, we find the department has failed to meet its burden in explaining the applicability of section 552.108(b)(1) to any portion of the remaining information at issue. *See id.* § 552.301(e)(1)(A) (governmental body has burden of proving that requested information must be withheld under stated exception). Accordingly, we conclude the department may not withhold any portion of the remaining information in Exhibit C under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. You indicate you will redact motor vehicle record information as permitted by section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009). Section 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 id.* § 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 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. *See* ORD 684. However, we note any other information made confidential by section 552.130(a)(2) 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. Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold the marked information in Exhibit A under subsection 552.108(a)(1) of the Government Code and the marked information in Exhibit B under subsection 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 common-law informer's privilege. The department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 459413

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)