



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Mr. David V. Overcash
Counsel for the City of Anna
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2012-12288

Dear Mr. Overcash:

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# 461069 (City File No. C03029PIR20120511-01).

The City of Anna (the "city"), which you represent, received a request for information pertaining to a specified automobile accident, including dispatch records, radio logs, 9-1-1 calls and related call logs, all documents that identify the name of anyone who reported the accident, recordings of the accident or people involved, the investigative file, supplemental notes, field notes, witness interviews, photographs, videos, scaled diagrams, accident reconstruction data, interview notes, mechanical inspections, dashcam videos from any squad cars at the scene, and any other documents received or acquired by the city's police department as part of the accident investigation. You state some information has been made available to the requestor, including the CR-3 accident report. Transp. Code § 550.065 (governmental agency shall release accident report to person who provides at least two of the following about accident: date, specific location, name of any person involved). You claim that the remaining requested 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.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. *Id.* § 552.108(a)(1). In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. *Id.* § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). You have provided an affidavit from the city's police chief stating the submitted information pertains to a closed investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is generally applicable to the information you have marked in the submitted report.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest 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, but is not limited to, a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the information you have released does not contain a sufficient portion of the narrative to satisfy the requirement that basic information be released. *See* ORD 127. Accordingly, we determine the city must release a sufficient portion of the narrative to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Therefore, except for a detailed description of the offense, the city may withhold the information it has marked under section 552.108(a)(2) of the Government Code.

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. You raise section 552.101 in conjunction with the common-law informer's privilege, which has long been recognized by Texas courts, for portions of the remaining information. *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). It protects from disclosure 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. 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 (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 (1988). However, a witness who provides information in the course of an investigation but does not make the initial report of the violations is not an informant for the purposes of claiming the informer's privilege.

You state the individual whose information you seek to withhold under the informer's privilege is not the complainant, but was a bystander who provided information regarding the motor vehicle accident at issue. As noted above, the informer's privilege does not protect the identity of a witness who provides information in the course of an investigation. Thus, we conclude the city has failed to demonstrate the applicability of the common-law informer's privilege to the witness identifying information you have marked. Accordingly, the city may not withhold any of the submitted information under section 552.101 in conjunction with common-law informer's privilege.

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. Gov't Code § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, the motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229, H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, the city must generally withhold the information we have marked under section 552.130 of the Government Code. We note some of the motor vehicle record information we have marked relates to a vehicle owned by an individual who is now deceased. If a living person owns an interest in the vehicle, the city must withhold this information under section 552.130. If no living person owns an interest in the vehicle, then the marked information relating to that vehicle is not excepted from disclosure and must be released. We further find you have

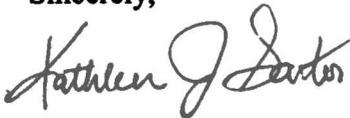
failed to demonstrate the applicability of section 552.130 to any of the remaining information you have indicated. Thus, the city may not withhold any of the remaining information under section 552.130 of the Government Code.

In summary, except for a detailed description of the offense, the city may withhold the information it has marked under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.130. However, the information pertaining to the vehicle driven by the deceased individual may only be withheld if a living person owns an interest in the vehicle. 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, 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 461069

Enc. Submitted documents

c: Requestor
(w/o enclosures)