



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2012

Mr. B. Chase Griffith
Counsel for the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-12702

Dear Mr. Griffith:

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# 461701 (Flower Mound Request No. 423-12; PIR# 1876).

The Town of Flower Mound (the "town"), which you represent, received two requests from the same requestor for all e-mails, formal complaints, correspondence, and police reports pertaining a specified address. The town states it has released some information to the requestor. 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.

Initially, we note some of the information you submitted as responsive to the first request, which we have marked, is not responsive because it was created after the date the town received the first request. The town need not release non-responsive information in response to the first request, and this ruling will not address that information with respect to the first request.

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). Generally, a governmental body claiming section 552.108(a)(1) 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 that the submitted information responsive to the first request pertains to a pending investigation being conducted by the town's Code Enforcement Department (the "department"). You inform this office that the department enforces section 14-572 of the town's Code of Ordinances. Based on this representation and our review, we find the department to be a law enforcement agency for the purposes of section 552.108. Furthermore, you state that the information at issue concerns alleged violations of section 14-572 which is punishable by a criminal penalty. Accordingly, we conclude that the release of this information 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, the information at issue is subject to section 552.108(a)(1) of the Government Code.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, the identification and description of the complainant. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The information at issue contains the identity of a complainant that would generally be subject to release as basic information. You contend, however, that the identity of the complainant is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Accordingly, we will address your argument for this information along with your arguments under the common-law informer's privilege for the submitted information responsive to the second request.

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 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). 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 (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 (1988).

You inform us the submitted information responsive to the first request contains identifying information of a complainant who reported possible violations of section 14-572 of the town's Code of Ordinances, a violation of which you inform us may result in a criminal penalty. Additionally, you inform us the submitted information responsive to the second request contains identifying information of complainants who reported possible violations of section 66-174 of the town's Code of Ordinances, a violation of which you inform us may result in a criminal penalty. Based on your representations and our review, we conclude that the town may withhold the identifying information we have marked under section 552.101 in conjunction with the informer's privilege. However, although you state the remaining information at issue relates to suspected violations of the town's ordinances, you have not identified the ordinances at issue, nor have you explained whether the violations carry civil or criminal penalties. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We note portions of the remaining submitted information responsive to the second request are subject to section 552.130(a)(2) of the Government Code.¹ This section provides that information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). Therefore, the town must withhold the information we have marked under section 552.130(a)(2) of the Government Code.

In summary, with the exception of the basic information, the town may withhold the submitted information responsive to the first request under section 552.108(a)(1) of the Government Code. In releasing this basic information, the town may withhold the identifying information of the complainant, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The town may withhold the identifying information of the complainants we have marked in the submitted information responsive to the second request under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The town must withhold the information we have marked under section 552.130(a)(2) of the Government Code. The town must release the remaining information responsive to the second request.

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.

¹The 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).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 461701

Enc. Submitted documents

c: Requestor
(w/o enclosures)