



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Ms. Elizabeth S. Horn
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-14108

Dear Ms. Horn:

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# 464081.

The City of Carrollton (the "city") received a request for information pertaining to case number 2010-005652. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 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 the submitted information pertains to an active criminal prosecution. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City*

¹Although you cite to section 552.103 of the Government Code in your brief, we understand you to raise section 552.108 based on the substance of your argument.

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, section 552.108(a)(1) is applicable to the submitted information.

However, 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). Basic information refers to the 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 considered to be basic information). We note basic information includes, among other items, a detailed description of the offense, the location of the offense or arrest, and the identifying information of the complainant, who, in this instance, is also the victim. See ORD 127 at 3-4. However, the basic information does not include dates of birth, the identifying information of witnesses who are not also the complainant, or the home address and telephone number of the complainant. See *id.* Thus, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

You raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege for portions of the basic information. 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. Section 552.101 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 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. See Open Records Decision No. 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 1-2 (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 (1988). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state portions of the basic information identify an informant who reported an assault to the city's police department. Upon review, we find the basic information does not include

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

the identifying information of an informant for purposes of the common-law informer's privilege. Therefore, the city may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

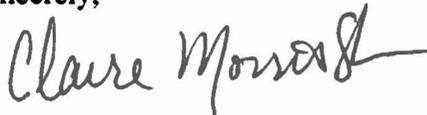
You also argue the narrative portion within the basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the case of *Houston Chronicle*, 531 S.W.2d 177. In this regard, we understand you to argue the information at issue is excepted under section 552.101 of the Government Code as information made confidential by judicial decision. However, *Houston Chronicle* did not determine the confidentiality of any information for purposes of section 552.101. See Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987) (confidentiality protected by section 552.101 requires express language making certain information confidential or requires that information not be released to public). Accordingly, we determine none of the basic information may be withheld under section 552.101 in conjunction with the court's holding in *Houston Chronicle*.

In summary, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 464081

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**