



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2012

Mr. Jeffrey L. Moore
Counsel for the City of Roanoke
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-15109

Dear Mr. Moore:

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# 470158.

The Roanoke Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim some of 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.

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. 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 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 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.

You state the department seeks to withhold the identifying information of the individual who reported an alleged criminal violation to the department. We note the department is responsible for the enforcement of the violation at issue and this violation carries criminal penalties. There is no indication the subject of the complaint knows the identity of the complainant in the submitted information. Based on your representations and our review, we conclude the department may generally withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate some of the information you seek to withhold identifies or tends to identify an individual who reported a violation, and this information may not be withheld on that basis. Accordingly, with the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹

You claim that the remaining information at issue is excepted under section 552.108(a)(1) of the Government Code. However, we note 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). 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 Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). In this instance, the information you seek to withhold consists of the complainant's race and sex. Because this information is basic information, it may not be withheld under section 552.108.

In summary, with the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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,

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

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,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 470158

Enc. Submitted documents

cc: Requestor
(w/o enclosures)