ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2012

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-16280

Dear Ms. Tapia:

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# 468143 (RPI# PD-99).

The City of Carrollton (the "city") received a request for a specified offense report. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 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.* § 552.301(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

[1]Although your brief does not specifically raise section 552.102 of the Government Code, we understand you to raise this exception based on the substance of your argument.

release of the information at issue 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, 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, unless the address is the location of the crime, the place of arrest, or the premises involved. *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

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[2]As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure, except to note that, generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

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 the information at issue reveals the identity of an individual who reported alleged violations of the law to the city's police department. Based on your representations and our review of the submitted information, we conclude that in releasing basic information, the city may withhold the identifying information of the complainant we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. However, you have not demonstrated how the remaining basic information reveals identifying information of an individual who reported violations of law. Therefore, none of the remaining basic information may be withheld under section 552.101 of the Government Code on the basis of the informer's privilege.

You also argue the entire 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, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The remaining basic 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,

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 468143

Enc. Submitted documents

c: Requestor
(w/o enclosures)