



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

November 2, 2012

Ms. L. Carolyn Nivens  
Paralegal  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056

OR2012-17595

Dear Ms. Nivens:

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# 469816 (LCPD Reference No. 2205; Ross Banks File No. 3607-1).

The City of League City Police Department (the "department"), which you represent, received a request for a specified police report. You state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your argument under section 552.108 of the Government Code, as it is potentially the most encompassing exception you raise. Section 552.108 provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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

(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;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You generally state the submitted report pertains to a criminal investigation for which the suspect was sentenced to jail time. You also provide supporting documentation from the department stating the suspect may try to gather information regarding the case and the investigative tools used. A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the

requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the information at issue, which pertains to a concluded criminal case in which the suspect was sentenced, pertains to a specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1). A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2), (b)(2). You have not explained how the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of either subsection 552.108(a)(2) or subsection 552.108(b)(2). Subsection 552.108(a)(3) is also inapplicable as the information at issue does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Lastly, you do not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the department may not withhold any of the information at issue under section 552.108.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information protected by the common-law informer's privilege, which 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). The 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. 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." 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. However, individuals who provide information in the course of an investigation but do not make the initial report of the violations 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 contend the identifying information of the victim and witnesses is protected by the common-law informer's privilege. You state the information at issue identifies the victim and witnesses who provided information to or assisted the department with its criminal

investigation. Additionally, you state the subject of the complaint does not know the identities of the victim or witnesses. Upon review, we conclude the department may withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with the informer's privilege. However, the remaining information you seek to withhold on this basis either is not identifying information or identifies witnesses who did not report the violation to the department. You have not explained how any of this remaining information identifies an individual who reported a violation for the purposes of the informer's privilege. As such, we find you failed to demonstrate the applicability of the informer's privilege to the remaining information, and the department may not withhold it under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception that the Texas Supreme Court recognized in *Texas Department of Public Safety v. Cox Texas Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 117 (Tex. 2011) ("freedom from physical harm is an independent interest protected under law, untethered to the right of privacy"). In the *Cox* decision, the Supreme Court recognized, for the first time, a common-law physical safety exception to required disclosure. *Cox*, 343 S.W.3d at 118. Pursuant to this common-law physical safety exception, the court determined "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned "vague assertions of risk will not carry the day." *Id.* at 119. Upon review of your arguments, we find you have not demonstrated that release of any of the information you seek to withhold would subject the individuals at issue to a specific risk of harm. As such, the department may not withhold any of the information at issue under section 552.101 on this basis.

You state section 552.023 of the Government Code may give the requestor a right of access to the report, including the information protected under the common-law informer's privilege. Section 552.023 gives a person or a person's representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See* Gov't Code § 552.023. We note the information we have marked under section 552.101 in conjunction with the common-law informer's privilege does not protect a privacy interest of the requestor. Therefore, section 552.023 does not provide the requestor a special right of access to the information at issue.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). Section 552.130 does not protect the state of issuance of a license plate. Upon review, we conclude the department must withhold the information we have marked under section 552.130. However, none of the remaining information you

have marked is subject to section 552.130; thus, the department may not withhold any of the remaining information on this basis.

Section 552.136 of the Government Code provides, in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

*Id.* § 552.136(a)-(b). Upon review, we conclude the department must withhold the credit card number and debit card number we have marked under section 552.136. However, we find you have not explained how the serial number of a cellular telephone you have marked consists of an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 to the remaining information and the department may not withhold any of the remaining information on this ground.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. Upon review, we find you have failed to demonstrate that release of any of the information you have marked would subject any employee or officer to a substantial threat of harm. Therefore, the department may not withhold any of the information at issue under section 552.152.

In summary, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The department must withhold the information we have marked under section 552.130 of the Government Code and under section 552.136 of the Government Code. The department must release the remaining information.<sup>1</sup>

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](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,

  
Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 469816

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the information to be released includes the requestor's driver's license number, which the department would be required to withhold from the general public under section 552.130(a)(1) of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to his own driver's license number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See id.* § 552.130(c). Thus, if the department receives another request for this same information from a person who would not have a right of access, section 552.130(c) authorizes the department to redact the requestor's driver's license number.