

December 19, 2012

Ms. Elizabeth L. White
Counsel for City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 770561918

OR2012-20488

Dear Ms. White:

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# 475098 (PIR 2341-S; File No. 3607-1).

The League City Police Department (the “department”), which you represent, received a request for information involving a named individual. You state some of the requested information is being released. You claim other responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We note privacy is a personal

¹We note you also raise section 552.023 of the Government Code, which is not an exception to disclosure under subchapter C of the Act. Section 552.023 grants a special right of access to information related to a person that is protected from public disclosure by laws intended to protect the person’s privacy interests to the person or the person’s authorized representative. *See Gov’t Code § 552.023(a)*.

²This letter ruling assumes the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov’t Code §§ 552.301(e)(1)(D), .302*; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

right that lapses at death; therefore, a deceased individual has no common-law right to privacy. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). We also note the public has a legitimate interest in knowing the general details of a crime. *See generally Lowe v. Hearst Comm., Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))); *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). In this instance, the information at issue pertains to police investigations of incidents involving an individual who is deceased. We therefore conclude the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the release of the information in Exhibit B would interfere with a pending criminal investigation. Based on your representations and our review, we conclude section 552.108(a)(1) is generally applicable to Exhibit B. *See Houston Chronicle*, 531 S.W.2d 177 (court delineates law enforcement interests present in active cases).

Section 552.108(a)(2) 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 . . . 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[.]” Gov’t Code § 552.108(a)(2). Section 552.108(b)(2) of the Government Code excepts from disclosure “[a]n 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 . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” You state the information you have marked in Exhibits A-1, A-2, and A-3 is related to concluded criminal investigations that did not result in a conviction or a deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is generally applicable to the marked information in Exhibits A-1 and A-2.³ With regard to Exhibit A-3, however, we note the information at issue is related to the same death that is the subject of the pending investigation to which Exhibit B pertains.

³As we are able to make this determination, we need not address your other claim for this information under section 552.108.

Thus, your claims for Exhibit A-3 under section 552.108(a)(2) and section 552.108(b)(2) are inconsistent with your demonstration that Exhibit B is related to a pending case. Under these circumstances, we are unable to conclude the information at issue in Exhibit A-3 is related to a concluded investigation. We therefore conclude the department may not withhold any of the information in Exhibit A-3 under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code.

With regard to Exhibits B, A-1, and A-2, we note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest 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 deemed public by *Houston Chronicle*). Basic information includes an identification and description of the complainant and a detailed description of the offense, but does not include information related to witnesses. See ORD 127 at 3-4. We also note Exhibits A-1 and A-2 consist of computer-assisted dispatch (CAD) records. In Open Records Decision No. 649 (1996), this office concluded information contained in a CAD report is substantially the same as basic information. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Thus, except for basic information under section 552.108(c), the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code and the marked information in Exhibits A-1 and A-2 under section 552.108(a)(2) of the Government Code.⁴

You also seek to withhold any information that would identify the complainants in Exhibits B, A-1, A-2, and A-3 under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Section 552.101 also encompasses the 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 (1998), 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.” 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. The privilege excepts the informer’s statement only to the extent

⁴As we are able to make these determinations, we need not address your claim under section 552.130 of the Government Code for this information.

necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

In this instance, you have not directed our attention to any alleged violation of a civil or criminal statute that was reported to a law enforcement agency by a complainant identified in Exhibits B, A-1, A-2, or A-3. We therefore conclude the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Lastly, we address your claim under section 552.130 of the Government Code for the marked driver's license number in Exhibit A-3. Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1). This exception protects personal privacy. Thus, because it belonged to a deceased individual, we conclude the marked driver's license number may not be withheld under section 552.130 of the Government Code and must be released.

In summary, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code and the marked information in Exhibits A-1 and A-2 under section 552.108(a)(2) of the Government Code, except for basic information under section 552.108(c), which must be released. The rest of the submitted 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,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 475098

Enc: Submitted documents

c: Requestor
(w/o enclosures)