



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2013

Mr. Christopher Garza
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2013-09055

Dear Mr. Garza:

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# 488982.

The Brazoria County Environmental Health Department (the "county") received a request for information pertaining to complaints against the requestor's property, including the names of complainants and names of employees who took photos of the requestor's property at issue. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation reflecting, the county and the Brazoria County District Attorney's office (the "district attorney's office"), are investigating possible violations of state and county laws pertaining to on-site sewage facility permit requirements. You explain the county is tasked with investigating laws and regulations relating to sewage facilities and

wastewater disposal in the county. You further explain the county and the district attorney's office enforce criminal and civil penalties arising from such violations. You argue the submitted information should not be released because it relates to an ongoing criminal investigation or prosecution. Based upon this representation and our review, we conclude that 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 of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d. Thus, section 552.108(a)(1) is applicable to the submitted information.

However, 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; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the submitted information from disclosure based on section 552.108(a)(1) of the Government Code.¹

We understand you to assert the basic information is excepted from disclosure pursuant to section 552.101 in conjunction with the informer's privilege. 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. This section 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 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. Open Records Decision Nos. 515 at 3 (1988), 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 2 (1981). 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 claim the basic information pertains to persons who reported possible violations of chapter 343 of the Health and Safety Code. *See* Health & Safety Code ch. 343 (concerning abatement of public nuisances). You inform us chapter 343 authorizes the county to seek injunctions or criminal penalties against violators. *See id.* §§ 343.012 (making public

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure, except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

nuisance under Health & Safety § 343.011(b) a misdemeanor), .013 (permitting county to bring suit for injunction to remedy violation of chapter 343). We note section 343.012 provides an offense under section 343.012 is a misdemeanor punishable by a fine or, in certain circumstances, confinement in jail, or both a fine and confinement. *Id.* § 343.012(b),(c). You do not indicate, nor does it appear, the subject of the complaints knows the identity of the complainants. Therefore, based on your representations and our review, we conclude the county has demonstrated the applicability of the common-law informer's privilege to the portions of the basic information that identify the complainants. Accordingly, the county may withhold the identifying information, which we 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 the remainder of the basic information consists of the identifying information of an individual who made the initial report of a criminal violation to the county for purposes of the informer's privilege. Accordingly, the county may not withhold any of the remaining basic information under section 552.101 on that basis.

In summary, with the exception of basic information, the county may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the county may withhold the identifying information of the complainants we have marked under section 552.101 in conjunction with the common-law 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 488982

Enc. Submitted documents

c: Requestor
(w/o enclosures)