



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 3, 2013

Ms. Michele Freeland  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2013-11414

Dear Ms. Freeland:

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# 492262 (PIR# 13-1527).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have indicated, is not responsive because it was created after the request for information was received. This ruling does not address the public availability of information that is not responsive to the request, and the department is not required to release non-responsive information.

Section 552.108 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 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 have provided a representation from the Federal Bureau of Investigation (the "FBI") stating that the FBI wishes to withhold the

information at issue because it relates to a pending criminal investigation. Therefore, based on this representation, we conclude release of the submitted information 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, we find 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. See 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the identification and description of the complainant. See ORD 127 at 3-4. Thus, with the exception of basic information, which must be released, the department may withhold the responsive information on behalf of the FBI under section 552.108(a)(1) of the Government Code.<sup>1</sup>

You seek to withhold the complainant's identifying information from the basic information under section 552.101 of the Government Code in conjunction with the informer's privilege. 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 has long been recognized by Texas courts. *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). It protects from disclosure 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. 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) (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 assert the basic information identifies a confidential police informant who reported to the department possible violations of the Texas Penal Code. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude the department may withhold the identifying

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<sup>1</sup>As our ruling is dispositive, we need not address your argument under section 552.108(b)(1) of the Government Code for this information.

information of the informer, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find none of the remaining information at issue identifies the informer. Accordingly, the department may not withhold any of the remaining information under section 552.101 in conjunction with the informer's privilege.

In summary, with the exception of basic information, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code on behalf of the FBI. In releasing basic information, the department may withhold the identifying information of the informer, which we 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 492262

Enc. Submitted documents

c: Requestor  
(w/o enclosures)