



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2013

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2013-12588

Dear Ms. Cost:

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# 493956 (PIR # 13-1769 and 13-1771).

The Texas Department of Public Safety (the "department") received a request for information regarding named individuals being notified their personal information was on a hard drive of a seized computer. The department received a second request for (1) several categories of information related to a named individual and the investigation of the individual, (2) information related to another named individual, and (3) information related to specified internal affairs investigations. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments requesting a ruling to the attorney general under subsection 552.301(e)(1)(A), to send a copy of those comments to the person who requested the information from the governmental body not later than the fifteenth business day after the date of receiving the written request. Gov't Code § 552.301(e-1). Section 552.301(e-1) authorizes the governmental body to redact information from those written comments that discloses or contains the substance of the information requested. *Id.* We note the department redacted the entirety of its argument under section 552.107(2) of the Government Code, including the quotation of the statute. We further note the redacted portion of the department's comments contains information that neither discloses nor contains the substance of the submitted information. We, therefore,

conclude the department failed to comply with section 552.301(e-1) in requesting a decision under section 552.107(2) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.107(2) can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information.

Next, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). The court-filed documents we have marked are subject to section 552.022(a)(17) and must be released unless confidential under the Act or other law. Although you raise section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the department may not withhold the information subject to section 552.022 under section 552.108. You also claim the information subject to section 552.022 is protected from disclosure under section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege is other law for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001); *Tex. Comm'n on Envtl. Quality v. Abbot*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Additionally, some of the court-filed documents contain information subject to section 552.130 of the Government Code, which makes information confidential.¹ Thus, we will address your assertion of section 552.101 in conjunction with the informer's privilege and section 552.130. Further, we will consider your arguments for the information not subject to section 552.022.

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,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information not subject to section 552.022 pertains to an active criminal investigation. Based on your representation and our review, we conclude 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) (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 information at issue.

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). Thus, with the exception of the basic information, which must be released, the department may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.²

Next, we address section 552.101 of the Government Code for the basic information and the information subject to section 552.022. 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. You raise section 552.101 in conjunction with 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).

You state the remaining information identifies a confidential police informant, who has reported violations of the Penal Code to the department. You also state the requestor has not indicated he knows the informant’s identity. However, upon review, we find none of the

²As our ruling is dispositive for this information, we need not consider your remaining argument against its disclosure.

remaining information identifies an informer. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the second requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must withhold the motor vehicle record information we have marked from the first requestor under section 552.130 of the Government Code.

In summary, with the exception of the court-filed documents we marked under section 552.022(a)(17) of the Government Code, the department may withhold the submitted information under 552.108(a)(1) of the Government Code. In releasing the marked court-filed documents, the department must withhold the motor vehicle record information we marked from the first requestor under section 552.130 of the Government Code.

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, 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 493956

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)