



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2013

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2013-19421

Dear Ms. Rangel:

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# 505345.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. 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.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531

S.W.2d 177 (Tex. App.—Houston [14th Dist] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity and description of the complainant. *See id.* Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

We understand you to assert the basic information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law 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. 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 state the complainant contacted the sheriff's office to report possible violations of law. 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 sheriff's office has demonstrated the applicability of the common-law informer's privilege to the portions of the basic information that identify the complainant. Accordingly, the sheriff's office may withhold the identifying information of the complainant under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate how 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 sheriff's office for purposes of the informer's privilege. Accordingly, the sheriff's office 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 sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

basic information, the sheriff's office may withhold the identifying information of the complainant, which we have marked, under section 552.101 of the Government Code 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.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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 505345

Enc. Submitted documents

cc: Requestor
(w/o enclosures)