ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2013

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2013-20411

Dear Ms. Pemberton:

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# 506629 (W011552).

The Killeen Police Department (the "department") received a request for reports pertaining to a specified address. You state you have released some information to the requestor. 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 "[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(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the call for service reports pertain to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations, we find section 552.108(a)(2) is applicable to the submitted information.

We note, however, that 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. Civ. 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 the types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

You seek to withhold gang related intelligence information from basic information under section 552.101 of the Government Code in conjunction with chapter 61 of the Code of Criminal Procedure. 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 other statutes. Article 61.02 of the Code of Criminal Procedure provides in part that "a criminal justice agency or a juvenile justice agency shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs." Crim. Proc. Code art. 61.02(a). Article 61.03 provides in part:

> (a) A criminal justice agency may release on request information maintained under this chapter to:
>
> (1) another criminal justice agency;
>
> (2) a court; or
>
> (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Id. art. 61.03(a). Article 61.05 of the Code of Criminal Procedure provides that release of the information to a person who is not entitled to the information is a Class A misdemeanor. You inform us the information at issue is maintained in the department's intelligence records for the purpose of investigating criminal gangs and may only be retrieved from documents contained in gang records. We understand the requestor is not entitled to obtain the information under article 61.03. Based on your representations, we conclude the department must withhold from the basic information the information maintained in its intelligence records for the purpose of investigating criminal gangs under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

You also seek to withhold the complainants' identifying information from basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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 complainant's identifying information is protected under the informer's privilege. You state the complainant contacted the police to report possible violations of law. You do not indicate, nor does it appear, the subjects of the complaints know the identity of the complainant. Based on your representations, we conclude the department may withhold the identifying information of the complainant we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the gang related intelligence information maintained in its intelligence records under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. The department may withhold from basic information the identifying information of the complainant 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, 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,

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 506629

Enc. Submitted documents

c: Requestor
(w/o enclosures)