



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2014

Dr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
208 East 10th Street, Suite 600
Austin, Texas 78701-2407

OR2014-21058

Dear Mr. Gomez:

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# 543622 (University File No. 14-0257).

The Sam Houston State University (the "university") received a request for all information pertaining to a specified offense report. You state some information was released to the requestor. You claim the portions of the information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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). 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit demonstrating, Attachment A pertains to an open criminal investigation by the university's police department. Based on your representation, we

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include the identities of victims or witnesses who are not the complainant. See ORD 127 at 4. Accordingly, with the exception of the basic information, the university may withhold Attachment A under section 552.108(a)(1) of the Government Code.²

You raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege for portions of the basic information. Section 552.101 of the Government Code excepts "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 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) (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. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990). However, witnesses who provide information in the course of an investigation, but do not make the initial report of the violation, are not informants for purposes of claiming the informer's privilege.

You assert the basic information reveals the identities of witnesses to the incident at issue. However, we find you have failed to demonstrate the basic information identifies an individual who made a report of an alleged violation of law to the university's police

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

department. Consequently, we find you have failed to demonstrate the applicability of the common-law informer's privilege to any of the basic information. Therefore, none of the basic information may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Basic information, in this instance, contains the arrestee's social security number, which you state is subject to section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). Thus, the university may withhold the arrestee's social security number under section 552.147(a) of the Government Code from the basic information.

In summary, with the exception of basic information, the university may withhold Attachment A under section 552.108(a)(1) of the Government Code. The university may withhold the arrestee's social security number under section 552.147(a) of the Government Code from the basic information.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 543622

Enc. Submitted documents

c: Requestor
(w/o enclosures)