



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2014

Mr. David T. Ritter
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-21760

Dear Mr. Ritter:

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# 545385 (ORR# 10-11731).

The City of McKinney (the "city"), which you represent, received a request for information regarding any accident reports, warrants, or pending charges pertaining to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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(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 submitted information pertains to several incidents that are open and pending investigation and possible prosecution. Based on your representations and our review, we find release of the information you have marked 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 you have marked, and the city may withhold this information under section 552.108(a)(1) of the Government Code.¹

Section 552.101 of the Government Code 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.

The city asserts the identifying information of the complainants, which it has marked, is protected under the common-law informer’s privilege. We understand the complainants contacted law enforcement to report possible violations of laws that carry criminal penalties. The city does not indicate, nor does it otherwise appear, the subject of the complaints knows the identity of any of the complainants. Based on these representations and our review, we conclude the city may withhold the identifying information of the complainants we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find the city has failed to demonstrate any portion of the remaining information it has marked consists of the identifying information of an individual who made a report of a criminal violation to law enforcement for purposes of the informer’s privilege. Therefore, the city may not withhold any portion of the remaining information it has marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.130 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. We note the purpose of section 552.130 is to protect personal privacy

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

interests. Thus, the requestor has a right of access to his driver's license information, which we have marked for release, under section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the city may not withhold the requestor's driver's license information from him under section 552.130 of the Government Code. However, upon review, we find the remaining information you have marked, in addition to the information we have marked, consists of motor vehicle record information subject to section 552.130. Thus, the city must withhold this information under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city may also withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Except for the information we have marked for release, the city must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. The remaining 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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)