



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2016

Mr. Rodrigo J. Figueroa
For the Trinity University Police Department
Dykema Cox Smith
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

OR2016-07500

Dear Mr. Figueroa:

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# 603942.

The Trinity University Police Department (the "department"), which you represent, received a request for police reports pertaining to rape, sexual assault, or sexual abuse filed during a specified time period.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded from her request the names and identifying information of victims and alleged suspects. Accordingly, the identifying information of the victims and alleged suspects is not responsive to the present request for information. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

¹We note the department asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Next, the department also informs us it has redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.² However, FERPA is not applicable to law enforcement records that are maintained and created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted information consists of records that were created by the department for the purpose of law enforcement. Thus, these records are not subject to FERPA, and the department may not withhold any portion of them on that basis. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the department’s claimed exceptions to disclosure. Accordingly, we will address the department’s arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the department that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous).

We will first address your argument under section 552.108 of the Government Code, as it is potentially the most encompassing. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked relates to concluded cases that did not result in convictions or deferred adjudications. Based on your representations, we conclude section 552.108(a)(2) is applicable to the information you have marked.

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

²The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General’s website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

(Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes, among other items, the identity and description of the complainant, but does not include the identity of a victim or witness, unless the victim is also the complainant. *See* ORD 127 at 3-4. We note the information you seek to withhold under section 552.108 includes the identities of complainants who are not the victims. This information is responsive to the present request. Thus, with the exception of basic information, which must include the identities of the complainants who are not the victims, the department may withhold the information you have marked pursuant to section 552.108(a)(2) of the Government Code.³

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. Section 552.101 encompasses 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. *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). However, individuals who provide information in the course of an investigation but do not report a violation are not informants for the purpose of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990). We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. *See* ORD 208 at 1-2.

You state portions of the remaining information, which you have marked, reveal the identities of complainants who reported violations of criminal law to the department. Further, you do not indicate the subjects of the complaints know the identities of the complainants. Based on your representation and our review, we conclude the department may withhold the identifying information of the complainants you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

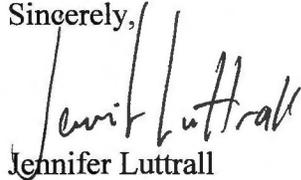
³As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

In summary, with the exception of basic information, which includes the identities of the complainants, the department may withhold the information you have marked pursuant to section 552.108(a)(2) of the Government Code. The department may withhold the identifying information of the complainants you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining responsive 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 603942

Enc. Submitted documents

c: Requestor
(w/o enclosures)