



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2016

Mr. Andrew Heston
Assistant District Attorney
County of Brazoria
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2016-21786

Dear Mr. Heston:

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# 627969.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for complaints made by two named individuals, including a specified complaint. 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 dealing with the detection, investigation, or prosecution of crime only in relation to 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 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 submitted information 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 submitted information.

However, section 552.108 of the Government Code 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). Thus, with the exception of the basic information, the sheriff’s office may withhold the submitted information under section 552.108(a)(2).¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the 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. *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).

You state portions of the basic information identify complainants who reported a possible violation of law to the city. There is no indication the subject of the complaints we have indicated knows the identities of the complainants. Thus, the sheriff’s office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, the request reflects the requestor, who is the subject of one of the complaints, knows the identity of the complainant in that report. Accordingly, we find you failed to demonstrate the applicability of the common-law informer’s privilege to this information. Accordingly, the sheriff’s office may not withhold the remaining information at issue 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, which must be released, the sheriff’s office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city may withhold the information

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

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bhf

Ref: ID# 627969

Enc. Submitted documents

c: Requestor
(w/o enclosures)