



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 18, 2015

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2015-05227

Dear Mr. Grove:

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# 556660.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for certain search warrant affidavits signed by a named officer during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code and privileged under rule 508 of the Texas Rule of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the requestor only seeks search warrant affidavits. Accordingly, the submitted search warrants and search warrant return and inventories are not responsive to the

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<sup>1</sup>We note, although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022.

<sup>2</sup>We 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.

instant request. The sheriff's office need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). Some of the responsive information pertains to completed investigations. This information is subject to section 552.022(a)(1) and must be released unless it is either excepted from disclosure under section 552.108 of the Government Code or is confidential under the Act or other law. You claim section 552.108. You also contend the information at issue is excepted from disclosure under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Further, you raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, which is also other law for purposes of section 552.022. *See Tex. Comm'n on Envtl. Quality v. Abbott*, No. GV300417 (126th Dist. Ct., Travis County, Tex.). We note section 552.152 of the Government Code makes information confidential under the Act. Thus, we will address your arguments against disclosure of the responsive information subject to section 552.022. We will also address your arguments for the information that is not subject to section 552.022.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). Subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977).

You raise section 552.108(a)(1) for the responsive information in Exhibit D and state this information pertains to a pending criminal investigation or prosecution. Based on this representation, we 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the sheriff's office may withhold the responsive information in Exhibit D under section 552.108(a)(1) of the Government Code.<sup>3</sup>

You raise section 552.108(a)(2) for the responsive information in Exhibit E and state this information pertains to closed cases that did not result in convictions or deferred adjudications. Based on your representations, we find the sheriff's office may withhold the responsive information in Exhibit E under section 552.108(a)(2) of the Government Code.<sup>4</sup>

You raise sections 552.108(a)(1) and 552.108(b)(1) for the responsive information in Exhibit F and state this information pertains to closed cases that resulted in convictions. Based on your representation, we find neither the investigations nor prosecutions on the matters are pending. Therefore, we find the sheriff's office may not withhold the responsive information in Exhibit F under section 552.108(a)(1) of the Government Code. Further, the sheriff's office has not demonstrated how release of the information at issue would interfere

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

with law enforcement or prosecutorial efforts for purposes of section 552.108(b)(1). Therefore, we conclude the sheriff's office may not withhold the responsive information in Exhibit F under section 552.108(b)(1) of the Government Code.

You contend the responsive information in Exhibit F is excepted under Texas Rule of Evidence 508. Rule 508 provides, in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

TEX. R. EVID. 508(a)-(b). Thus, an informer's identity is protected under Rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 508(c). We note, however, that the information at issue does not identify any of the confidential informers. Accordingly, the information at issue may not be withheld pursuant to Rule 508 of the Texas Rules of Evidence.

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 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 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. 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). 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 that informer's identity. Open Records Decision No. 549 at 5 (1990). Upon review, we find none of the responsive

information in Exhibit F identifies an informer for purposes of the informer's privilege. Accordingly, none of the information at issue may be withheld under section 552.101 on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>5</sup> Gov't Code § 552.130. Upon review, we find the sheriff's office must withhold the motor vehicle record information we have marked in Exhibit F under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. You inform us the responsive information in Exhibit F relates to undercover police officers of the Fort Bend County Narcotics Task Force. You state release of this information, except for the identity of the officer named in the instant request for information, would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of some of the information at issue, which we have marked, would subject the officers at issue to a substantial threat of harm. Thus, the sheriff's office must withhold the information we have marked in the responsive information in Exhibit F under section 552.152 of the Government Code. However, we find you have failed to demonstrate release of the remaining information at issue would subject an employee or officer to a substantial risk of physical harm. Accordingly, the sheriff's office may not withhold any of the remaining responsive information in Exhibit F under section 552.152 of the Government Code.

In summary, the sheriff's office may withhold the responsive information in Exhibit D under section 552.108(a)(1) of the Government Code and the responsive information in Exhibit E under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked in Exhibit F under sections 552.130 and 552.152 of the Government Code. The sheriff's office must release the remaining responsive information in Exhibit F.

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<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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](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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

Ref: ID# 556660

Enc. Submitted documents

c: Requestor  
(w/o enclosures)