



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2016

Mr. Andrew Heston  
Assistant District Attorney  
Brazoria County  
111 East Locust, Suite 408A  
Angleton, Texas 77515-4676

OR2016-19065

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# 624131.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to the death of the requestor's son. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1175 of the Government Code.<sup>1</sup> 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 concerning an investigation that did not result in conviction or deferred adjudication. *See* 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed case that

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<sup>1</sup>Although you claim section 552.117 of the Government Code for portions of the submitted information, section 552.1175 is the proper exception to raise in this instance because the sheriff's office does not hold the submitted information in an employment capacity.

did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, 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 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identifying information of the complainant. *See id.* at 3-4. However, basic information does not include dates of birth or the identity of a suspect who is not an arrestee. *See id.* Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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. You raise section 552.101 in conjunction with 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, 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). However, individuals who provide information in the course of an investigation are not informants for the purposes 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* Open Records Decision No. 208 at 1-2 (1978).

You inform us portions of the basic information identify a complainant who reported alleged criminal violations to the sheriff's office. We have no indication the subject of the complaint knows the identity of the informer. Based upon your representations and our review, we

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<sup>2</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

conclude the sheriff's office has demonstrated the applicability of the common-law informer's privilege to some of the information at issue, which we have marked. Therefore, the sheriff's office may withhold the basic information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate any of the remaining basic information consists of the identifying information of an individual who reported a criminal violation to the sheriff's office for purposes of the informer's privilege. Accordingly, the sheriff's office may not withhold the remaining basic information under section 552.101 on that basis.

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 basic information, 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.

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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bw

Ref: ID# 624131

Enc. Submitted documents

c: Requestor  
(w/o enclosures)