



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 22, 2016

Ms. Julie Pandya Doshier
Counsel for the City of Coppell
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2016-26016

Dear Ms. Doshier:

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# 635215 (Coppell Reference No. 79143).

The City of Coppell (the "city"), which you represent, received a request for complaints filed against the requestor's address. The city states it released some information. Further, the city states, pursuant to the previous determination in Open Records Decision No. 684 (2009), it will redact personal e-mail addresses subject to section 552.137 of the Government Code.¹ 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)(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 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). This section is generally not applicable to records created by an agency whose chief function is essentially

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

regulatory in nature. *See* Open Records Decision No. 199 (1978). However, section 552.108 does apply to records created by an agency whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981).

You state the submitted information relates to an open and pending criminal investigation by the city's Building Inspections Department (the "department"). You also state the department is a law enforcement agency because the department is charged with enforcing the city's building construction, fire, zoning, and neighborhood integrity codes and ordinances. You explain violations of the city's codes and ordinances constitute Class C misdemeanors. You assert the release of the submitted information would interfere with the department's ongoing criminal investigation. Based on your representations and our review, we find the department is a law enforcement agency for purposes of section 552.108 of the Government Code, and we conclude section 552.108(a)(1) is applicable to the submitted information in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (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).

However, we note, and you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, an identification and description of the complainant but does not include the complainant's telephone number or home address, unless the address is the location of the crime. ORD 127. Thus, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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*

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 make a report of the violation 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).

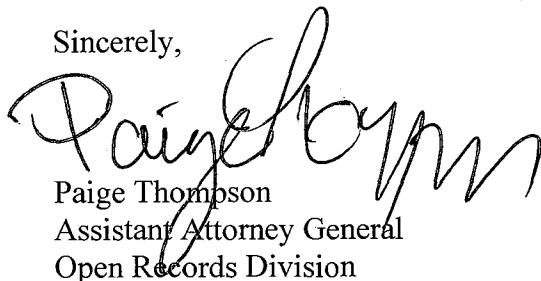
You claim the informer's privilege for the identity of a complainant who reported an alleged violation of a city ordinance. You indicate the alleged violation was reported to the department, which as previously discussed is charged with enforcing city codes and ordinances. You state, and the submitted information reflects, the subject of the complaint does not know the identity of the informer. You also state a violation of the ordinance at issue is a Class C misdemeanor. Based on your representations and our review, we conclude the city has established the applicability of the informer's privilege to the complainant's identifying information. Accordingly, in releasing basic information, the city may withhold the complainant's identifying information 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 city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city may withhold the complainant's identifying information 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 635215

Enc. Submitted documents

c: Requestor
(w/o enclosures)