



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Mr. Mathew L Grove  
Assistant County Attorney  
Fort Bend County Attorney's Office  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2017-06113

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# 650139.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for police statements and reports pertaining to a specified location for a specified period of time. You state you have released some information. You claim portions of the submitted information are 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 representative sample of information.<sup>1</sup>

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);

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<sup>1</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 those records contain substantially different types of information than that submitted to this office.

see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 15-12930, 15-36247, and 16-26453 pertain to active criminal investigations or prosecutions. Based on your 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 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report numbers 15-12930, 15-36247, and 16-26453.

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 report numbers 14-1733, 14-34615, 15-35961, 15-35963, and 16-41032 pertain to closed cases that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to report numbers 14-1733, 14-34615, 15-35961, 15-35963, and 16-41032.<sup>2</sup>

However, we note 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*. 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, the identity of the complainant. See ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold report numbers 15-12930, 15-36247, and 16-26453 under section 552.108(a)(1) of the Government Code and may withhold report numbers 14-1733, 14-34615, 15-35961, 15-35963, and 16-41032 under section 552.108(a)(2) of the Government Code.

We note you raise common-law privacy for the basic information in report number 15-35963. 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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by

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

the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find no portion of the basic information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff's office may not withhold any of the basic information in report number 15-35963 under section 552.101 of the Government Code on the basis of common-law privacy.

You also raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, which Texas courts have long recognized for report number 16-41032. *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, witnesses 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). 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 contend the basic information in report number 16-41032 identifies a complainant who reported a violation of law to the sheriff's office. However, upon review, we find the subject of the complaint knows the identity of the informant. Therefore, we find the sheriff's office has failed to demonstrate the applicability of the common-law informer's privilege to the information at issue. Consequently, the sheriff's office may not withhold any of the 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 report numbers 15-12930, 15-36247, and 16-26453 under section 552.108(a)(1) of the Government Code and may withhold report numbers 14-1733, 14-34615, 15-35961, 15-35963, and 16-41032 under section 552.108(a)(2) of the Government Code.

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,

A handwritten signature in cursive script, appearing to read "D. Michelle Case", followed by a horizontal flourish.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/nmd

Ref: ID# 650139

Enc. Submitted documents

c: Requestor  
(w/o enclosures)