



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

Ms. Dawn Bracket
Counsel for the Town of Addison
Messer Rockefeller & Fort
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2017-22188

Dear Ms. Bracket:

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# 678034 (ORR ID# 4861).

The Town of Addison (the "town"), which you represent, received a request for a specified case. You state the town has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code.¹ 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). You state the submitted information pertains to a pending criminal case. Based on your representation, we conclude the release of the submitted information 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.

¹We understand you to raise section 552.130 of the Government Code based on your markings in the submitted information.

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 the submitted information.

However, 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 the identity and description of the complainant, but does not include the identity of victims or witnesses who are not also the complainant. See ORD 127. We further note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code, dates of birth, or e-mail addresses of members of the public. See *id.* Thus, with the exception of the basic information, you may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

You seek to withhold some of the basic information under section 552.101 of the Government Code in conjunction with the informer's privilege. 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 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 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 Nos. 515 at 3 (1988), 208 at 1-2 (1978). The 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." See Open Records Decision No. 279 at 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 4-5. The privilege protects the informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990). Further, 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.

You state the basic information identifies a complainant who reported a violation of law to the town's police department. Based upon your representations and our review, we conclude

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

the town has demonstrated the applicability of the common-law informer's privilege to the information at issue. Therefore, the town may withhold the identifying information of the complainant, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of the basic information, which must be released, the town may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the town may withhold the identifying information of the complainant 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 678034

Enc. Submitted documents

c: Requestor
(w/o enclosures)