



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of the General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701

OR2017-23140

Dear Ms. Burnett:

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# 685179 (OGC # 177154, 177203, and 177204).

The University of Texas Medical Branch at Galveston (the "university") received three requests from the requestor for information pertaining to a specified incident. You state the university has released some of the requested information. You claim some of 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)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked relates to a concluded case that did not result in a conviction or deferred adjudication. Based on

your representations and our review, we conclude the university may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

You claim some of the remaining information is protected by the common-law informer's privilege. Section 552.101 of the Government Code encompasses 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. *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.

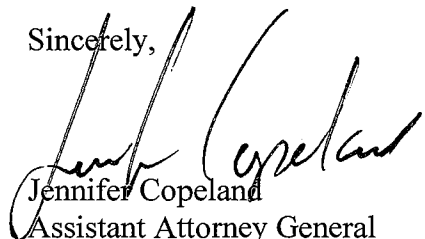
You assert portions of the remaining information identify a complainant who reported a potential violation of law to the university's police department. We have no indication the subject of the complaint know the identity of the complainant. Upon review, we find the university has demonstrated the applicability of the common-law informer's privilege to most of the information it marked. However, some of the information the university marked does not identify an individual who reported a violation of law to the university for purposes of the informer's privilege. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with the common-law informer's privilege. Thus, with the exception of the information we marked for release, the university may withhold the information it marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the university may withhold the information it marked pursuant to section 552.108(a)(2) of the Government Code. With the exception of the information we marked for release, the university may withhold the information it marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.

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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/sb

Ref: ID# 685179

Enc. Submitted documents

c: Requestor  
(w/o enclosures)