



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2018

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2018-02977

Dear Mr. Beauchamp:

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# 694030 (TCOLE ID# 11-13-2017 Coyne, Christin).

The Texas Commission on Law Enforcement (the "commission") received a request for any investigations or complaints regarding training requirements for corrections officers at a specified jail during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹Although the commission also raises Texas Rule of Evidence 508, we need not address this provision as the proper exception to raise when asserting the informer's privilege for information not subject to section 552.022 of the Government Code is section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision No. 676 at 1-2 (2002).

²We 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.

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[.]” *Id.* § 552.108(a)(1). Generally, 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). Section 552.108 is applicable only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 at 2 (1988), 287 (1981)*. Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *See Open Records Decision No. 199 (1978)*. However, an agency that employs peace officers to investigate crime and enforce criminal laws may claim section 552.108 excepts portions of its records from required disclosure. *See Open Records Decision No. 127 at 8 (1976)* (arson investigation unit of fire department is law enforcement agency). You explain the Enforcement Division of the commission is comprised of commissioned investigators who investigate criminal violations of law as they relate to the commission’s mission. *See Occ. Code § 1701.160* (commission may commission certified peace officers as investigators employed by commission for purpose of assisting commission in administering chapter 1701); *see also id.* §§ 1701.551-.553. You state the commission employs peace officers with full investigative, detention, and arrest authority. Further, you state the submitted information pertains to a pending criminal investigation being conducted by the commission. Based on this representation and our review, 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. 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.

We note, 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). Thus, with the exception of the basic information, the commission may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

You claim some of the basic information is protected by section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional,

³As our ruling is dispositive, we do not address the remaining arguments to withhold the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103. *See Open Records Decision No. 597 at 2-3 (1991)*.

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. *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 state portions of the basic information identify a complainant who reported a potential criminal violation of law to the commission. Based upon your representations and our review, we conclude the commission has demonstrated the applicability of the common-law informer’s privilege to the information at issue. Therefore, the commission may withhold the identity of the complainant, which you 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 commission may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the commission may withhold the identity of the complainant, which you 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,

A handwritten signature in black ink, appearing to read 'S. Pounds', written in a cursive style.

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 694030

Enc. Submitted documents

c: Requestor
(w/o enclosures)