



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2019

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

OR2019-23597

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# 782541 (OGC# 191119).

The University of Texas Medical Branch at Galveston (the "university") received a request for police reports related to a specified individual on a specified date. You state the university will redact information pursuant to section 552.130 of the Government Code and Open Records Letter No. 2016-100077 (2016).¹ You claim the submitted information is excepted from disclosure under section 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 must explain how and why section 552.108 is applicable to the information at issue. *See*

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2016-100077 is a previous determination allowing the university to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision from this office.

id. § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an open criminal investigation. Based upon your representation and our review, we conclude 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). Therefore, we conclude section 552.108(a)(1) of the Government Code is applicable to the submitted information.

As you acknowledge, section 552.108 does not except from disclosure basic information about a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186-87. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the university may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses the 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 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 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).

You state the information you marked reveals the identity of a complainant who reported possible violations of state law and city ordinances that carry criminal penalties to officers of the university's police department, who are authorized to enforce the laws and ordinances at issue. There is no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude some of the basic information, which we marked, identifies the complainant. Thus, when releasing basic information, the university may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, upon review, we find you have failed to establish the remaining information you marked identifies an individual who reported a possible violation of the law. Therefore, the university may not withhold any portion of the remaining information you marked on the

basis of section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Accordingly, the remaining information must be released.

In summary, with the exception of basic information, which you state will be released, the university may withhold the submitted information under section 552.108(a)(1) of the Government Code. When releasing basic information, the university may withhold the information we 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Sean McCormick
Assistant Attorney General
Open Records Division

SMI/eb

Ref: ID# 782541.

Enc. Submitted documents

c: Requestor
(w/o enclosures)