



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 15, 2020

Mr. J. Eric Magee
Counsel for the Victoria County Sheriff's Office
Allison, Bass & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2020-01418

Dear Mr. Magee:

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# 806445.

The Victoria County Sheriff's Office (the "sheriff's office"), which you represent, received a request for records showing amounts of money paid to confidential informants in specified investigations during a certain time period. You claim the submitted information is excepted from disclosure under section 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of information in an account or voucher relating to the expenditure of funds by a governmental body subject to

section 552.022(a)(3). The submitted information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). You seek to withhold the information subject to section 552.022(a)(3) under sections 552.101 and 552.108 of the Government Code. However, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions); 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the information at issue may not be withheld under section 552.108 of the Government Code. However, we will consider the applicability of section 552.101 of the Government Code for the information subject to section 552.022(a)(3). You also raise the common law informer's privilege, as incorporated by section 552.101 of the Government Code. The common law informer's privilege is "other law" for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Envtl. Quality v. Abbott*, No. GN-204227 (126th Dist. Ct., Travis County, Tex.). Thus, we will consider your arguments under the common law informer's privilege for the submitted information.

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 section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the sheriff's office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.¹

Section 552.101 of the Government Code also encompasses information protected by 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 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. 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." 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 excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

You state the submitted information reveals the identity of individuals who participated as confidential informants in a criminal investigation. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the informants. Therefore, based on your representations and our review, we conclude the sheriff's office may withhold the identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we conclude you have failed to demonstrate the applicability of the common-law informer's privilege to the remaining information and the sheriff's office may not withhold any of the remaining information under section 552.101 on that basis.

In summary, the sheriff's office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The sheriff's office must release the remaining information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/be

Ref: ID# 806445

Enc. Submitted documents

c: Requestor
(w/o enclosures)