



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2020

Mr. Eric C. Farrar
Counsel for the City of Dickinson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2020-02702

Dear Mr. Farrar:

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# 808643 (ORR# COD19-039).

The City of Dickinson (the "city"), which you represent, received a request for information related to several specified cases. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims 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). The city states case numbers 1692 and 1693 pertain to active criminal investigations and prosecutions. Based on this representation, we conclude the 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). Thus, section 552.108(a)(1) is applicable to case numbers 1692 and 1693.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The city states the remaining reports pertain to closed criminal cases that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the remaining reports.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 city may withhold case numbers 1692 and 1693 under section 552.108(a)(1) of the Government Code and may withhold the remaining reports under section 552.108(a)(2) of the Government Code.

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. The city raises 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). 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.

The city states portions of the basic information identify complainants who reported violations of law to the city. Further, the city has demonstrated such violations carry criminal and civil penalties. Based upon the city’s representations and our review, we conclude the city has demonstrated the applicability of the common-law informer’s privilege to the information at issue. Therefore, the city may withhold the identities of the complainants 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, the city may withhold case numbers 1692 and 1693 under section 552.108(a)(1) of the Government Code and may withhold the remaining reports under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city may withhold the identities of the complainants

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long, sweeping flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 808643

Enc. Submitted documents

c: Requestor
(w/o enclosures)



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