



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 1, 2020

Mr. L. Brian Narvaez  
Counsel for the Town of Prosper  
Brown & Hofmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2020-16782

Dear Mr. Narvaez:

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# 835710 (Ref. Nos. 2020-307, 2020-319).

The Town of Prosper (the "town"), which you represent, received two requests from the same requestor for information pertaining to a specified address during a specified time period, including a specified incident. You state you have released some information the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 have marked in Exhibit C reveals the identity of a complainant who reported a possible violation of a town ordinance that carries a criminal penalty to the town, which is authorized to enforce the ordinance 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 the information you have marked identifies the complainant. Thus, the town may withhold the information you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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. 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); Open Records Decision No. 434 (1986). You state Exhibit B-1 pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibit B-1. Accordingly, the town may withhold Exhibit B-1 under section 552.108(a)(2) of the Government Code.<sup>1</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find Exhibit B-2 contains information subject to section 552.130. You state the town does not have the technological capability to redact the motor vehicle record information from the recording at issue. Accordingly, the town must withhold Exhibit B-2 in its entirety under section 552.130.<sup>2</sup> *See* Open Records Decision No. 364 (1983).

In summary, the town may withhold the information you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The town may withhold Exhibit B-1 under section 552.108(a)(2) of the Government Code. The town must withhold Exhibit B-2 in its entirety under section 552.130. The town 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.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/rm

Ref: ID# 835710

Enc. Submitted documents

c: Requestor  
(w/o enclosures)