



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2020

Ms. Savannah L. Koehler  
Paralegal  
City of New Braunfels  
550 Landa Street  
New Braunfels, Texas 78130

OR2020-28690

Dear Ms. Koehler:

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# 854344 (Reference No. PD Control No. 3423-20).

The New Braunfels Police Department (the "department") received a request for information pertaining to the requestor. You claim some of the submitted information is excepted from disclosure under sections 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)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states Exhibit C pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

However, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* 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, which must be released, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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)*. 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 contend portions of the remaining information reveal the identity of an informer who reported possible criminal violations of law to the department. We have no indication the subject of the report knows the informer's identity. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, with the exception of the information we marked for release, the department may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have not demonstrated the remaining information at issue identifies an individual who reported a criminal or city ordinance violation to the city for purposes of the informer's privilege. Accordingly, the department may not withhold any of the remaining information under section 552.101 on that basis.

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

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

In summary, with the exception of basic information, which must be released, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. With the exception we marked for release, the department may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department 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,

Jahnna Ward  
Assistant Attorney General  
Open Records Division

JW/rm

Ref: ID# 854334

Enc. Submitted documents

c: Requestor  
(w/o enclosures)