



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2021

Ms. Lori J. Robinson
Counsel for the City of Lakeway
Bickerstaff Heath Delgado Acosta LLP
3711 South Mopac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2020-28859A

Dear Ms. Robinson:

Our office issued Open Records Letter No. 2020-28859 (2020) on November 18, 2020. Since that date, our office has received additional information. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on November 18, 2020. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")). This ruling was assigned ID# 868091.

The City of Lakeway (the "city"), which you represent, received a request for information regarding the requestor's client, another named individual, and a specified address during a certain date range. You claim some of the submitted information was not properly requested pursuant to section 1701.661(a) of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a

¹ Although you also raise section 552.137 of the Government Code in your brief, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

discretionary exception 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 Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the city may not withhold the submitted court-filed documents, which we marked, under section 552.108. Additionally, we note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed documents subject to section 552.022(a)(17). Further, we will address your arguments against disclosure of the remaining information not subject to section 552.022.

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). You state, and provide documentation showing, the remaining information you indicated relates to an inactive criminal investigation where the statute of limitations has not run that may be reopened. You also state release of the information at issue would interfere with the investigation of the case. 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 the remaining information you indicated.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 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 information subject to section 552.022(a)(17) of the Government Code and the basic information, the city may withhold the information you indicated under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue. In addition, 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 recording. *See generally* Occ. Code § 1701.661(a), (e).

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 Exhibit E reveals the identity of a complainant who reported a possible violation of a city ordinance that carries criminal penalties to the city’s police department, which is authorized to enforce the laws and ordinances at issue. You also state a portion of Exhibit F reveals the identity of a complainant who reported a possible violation of a city ordinance to the city’s code enforcement department, which is authorized to enforce city code violations. There is no indication the subject of the complaint knows the identity of the complainants. We note, in some circumstances, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire audio statement to protect the informant’s identity. *Open Records Decision No. 434* at 2 (1986). Based on your representations and our review, we conclude Exhibit E in its entirety and the information we marked in Exhibit F identifies the complainants. Thus, the city may withhold Exhibit E in its entirety and the information we marked in Exhibit F under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

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. *See Gov’t Code § 552.130*. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, with the exception of the basic information, and the information subject to section 552.022(a)(17) of the Government Code, which must be released, the city may withhold the information you indicated under section 552.108(a)(1) of the Government Code. The city may withhold Exhibit E in its entirety and the information we marked in Exhibit F under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. In releasing the information subject to section 552.022(a)(17) of the Government Code, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must

release the remaining information.³

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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/rm

Ref: ID# 868091

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the information being released contains a partial social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).