



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2022

Ms. M. Shelby Percy
Counsel for the City of Glenn Heights
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard Street, 1800 Ross Tower
Dallas, Texas 75201

OR2022-00826

Dear Ms. Percy:

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# 924479 (File Reference 125537 and 125985).

The City of Glenn Heights (the "city"), which you represent, received nine requests for information pertaining to a specified incident. You claim 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.

Initially, we note the submitted information contains court-filed documents, which we marked, that are subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record[,]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for the submitted court-filed documents, this exception is discretionary in nature and does not make information confidential under the Act. *See* ORD 177 (governmental body may waive statutory predecessor to section 552.108); *see also* ORD 665 at 2. Therefore, the city may not withhold the marked information subject to section 552.022(a)(17) under section 552.108. However, because sections 552.1175 and 552.130 of the Government Code make information confidential under the Act, we will address their

applicability to the court-filed documents subject to section 552.022(a)(17).¹ Further, we will also consider your arguments for the 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 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 the remaining information relates to a pending investigation and prosecution. Based on your representation, we find release of the remaining information 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.

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold the remaining information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code.²

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 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.

¹ 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).

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

See Open Records Decision Nos. 582 at (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).

You state some of the remaining information reveals the identity of a complainant who reported possible violations of state law that carry criminal penalties to the city's police department, which is authorized to enforce the laws at issue. There is no indication the subject of the complaint knows the identity of the complainant. Based upon these representations and our review, we find the information at issue identifies the complainant. Thus, the city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *See id.*; *see also id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Some of the remaining information relates to an individual who may be a current or honorably retired peace officer, but the information is not held in an employment context. We are unable to determine from the information provided if the individual at issue is a current or honorably retired peace officer. Thus, we must rule conditionally. Accordingly, if the information at issue relates to an individual who is a current or honorably retired peace officer, who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue is not a current or honorably retired peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b) the marked information may not be withheld under section 552.1175.

As noted above, 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 information we marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the city may withhold the remaining information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code. The city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. If the information we marked relates to an individual who is a current or honorably retired peace officer, who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code. The city must withhold the information we marked under section 552.130 of the Government Code. The city 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jm

Ref: ID# 924479

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)