



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2022

Ms. Cynthia Trevino
Counsel for the City of Burnet
Denton, Navarro, Rocha, Bernal & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78213-4685

OR2022-09620

Dear Ms. Trevino:

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# 937726 (ORR# 22-008).

The City of Burnet (the "city"), which you represent, received a request for e-mails related to specified complaints during a specified time period.¹ 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 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

¹ The city states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a closed criminal investigation that concluded in a final result other than conviction or deferred adjudication. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

The city claims section 552.108(a)(1) of the Government Code for information related to a certain case, and states the information related to that case pertains to a matter that is pending. The city also generally claims section 552.108(a)(2) of the Government Code for the submitted information and states the information contains “mental impressions and investigative notes” and argues release of the records will interfere with law enforcement. The city adds, “the cases did not end in conviction or deferred adjudication.” The city also provided a statement demonstrating the information at issue pertains to code enforcement cases that have been “rectified and are closed.” Upon review, we are unable to determine whether the submitted information relates to ongoing criminal cases of the city or the city’s police department or to closed cases that did not result in conviction or deferred adjudication. Thus, we find the city has failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(a)(2) to the information at issue. Therefore, the city may not withhold any portion of the submitted information under section 552.108 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. Section 552.101 encompasses 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). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer’s privilege. 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 some of the submitted information, which it marked, identifies a complainant who reported violations of city ordinances to the city's Code Enforcement Officer (the "officer"). The city explains the officer is responsible for enforcing the relevant portions of the city ordinances. The city also states violations of the relevant city ordinances carry civil or criminal penalties. Based upon these representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, the city may withhold the complainant's name and e-mail address under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, the city has failed to demonstrate the remainder of the information it marked identifies an individual who made a report of a violation to the city for purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information it marked under section 552.101 on that basis. 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 937726

c: Requestor