



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 2, 2022

Ms. Cynthia Trevino
Counsel for the City of Del Rio
Denton, Navarro, Rocha, Bernal & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2022-15862

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# 951091 (City #22-105; DNRBZ # 22-104).

The Del Rio Police Department (the "department"), which you represent, received a request for information pertaining to a specified investigation. You assert some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. Additionally, and in the alternative, you claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, we note the requestor specifically excluded digital media and recordings from the present request. Thus, the portions of the submitted information that consists of digital media and recordings are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request.²

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² AS we are able to make this determination, we do not address the applicability of section 1701.661(a) to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e). Additionally, as we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

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). Generally, 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 the responsive information pertains to an ongoing criminal investigation conducted by the department. Based on your representations and our review, 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 information at issue.

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; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes a detailed description of the offense and the identity of the complainant, but does not include dates of birth, telephone numbers, or motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, the department may withhold the responsive information you marked under section 552.108(a)(1) of the Government Code.³

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. This section 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

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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 seek to withhold portions of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. You state the complainant reported possible violations of law to the department, which is authorized to enforce the laws at issue. Based on your representations, we agree 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.⁴

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 department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the basic information, which must generally be released, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. 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 withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining responsive 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ms. Cynthia Trevino - Page 4

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Enc. Submitted documents

c: Requestor
(w/o enclosures)