



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2022

Ms. Asha Pender
Assistant City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2022-22148

Dear Ms. Pender:

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# 962067 (Reference No. W039191).

The Killeen Police Department (the "department") received a request for all police reports and calls for service involving the requestor and two stated addresses during specified time periods. You state the department released some information to the requestor, including basic information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted 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: (1) 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 report numbers 22-000614 and 22-003008 relate to pending criminal investigations and report numbers 20-006097 and 22-006100 relate to pending prosecutions. Based upon these representations, 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 report numbers 20-006097, 22-000614, 22-006100, and 22-003008.

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. *See 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). You assert report numbers 19-004151, 19-006624, 21-006831, K21143351, K21145446, K21145697, K21156659, and K21167745 relate to criminal investigations that concluded in results other than convictions or deferred adjudications. Based upon your representation, we conclude section 552.108(a)(2) is applicable to report numbers 19-004151, 19-006624, 21-006831, K21143351, K21145446, K21145697, K21156659, and K21167745.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See id.* § 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 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense and the complainant’s identity, but does not include, among other items, information related to witnesses or victims who are not the complainant. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the department may withhold report numbers 20-006097, 22-000614, 22-006100, and 22-003008 under section 552.108(a)(1) of the Government Code and report numbers 19-004151, 19-006624, 21-006831, K21143351, K21145446, K21145697, K21156659, and K21167745 under section 552.108(a)(2) of the Government Code.¹

You claim some of the basic information is protected by section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Gov't Code* § 552.101. This exception encompasses the 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

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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). 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 state the basic information at issue identifies complainants who reported violations of law to the department. We have no indication the subject of the complaints is aware of the identities of the complainants in this instance. Based upon your representations and our review, we conclude you have demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Accordingly, the department may withhold the identities of the reporting parties within the basic information at issue, which we indicated, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate any of the remaining information at issue identifies informers for purposes of the common-law informer's privilege. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of basic information, which must be released, the department may withhold report numbers 20-006097, 22-000614, 22-006100, and 22-003008 under section 552.108(a)(1) of the Government Code and report numbers 19-004151, 19-006624, 21-006831, K21143351, K21145446, K21145697, K21156659, and K21167745 under section 552.108(a)(2) of the Government Code. In releasing the basic information, the department may withhold the identities of the reporting parties we indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 962067

Enc. Submitted documents

c: Requestor
(w/o enclosures)