



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2022

Ms. Montana Anderson
Litigation & PIA Paralegal
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2022-33284

Dear Ms. Anderson:

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# 980723 (22-1699 Olson).

The City of Abilene (the “city”) received a request for all reports pertaining to a named individual and a specified address during a certain period of time. You state you will redact certain information pursuant to section 552.130(c) of the Government Code and Open Records Letter No. 2019-23652 (2019).¹ 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.

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 the submitted information pertains to an ongoing criminal investigation. Based on your representation, we conclude

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2019-32652 authorizes the city to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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 submitted information.

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). We note basic information includes the identity of the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(1) 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. You raise section 552.101 in conjunction with 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, 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). However, individuals who provide information in the course of an investigation 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.

You inform us portions of the basic information identify a complainant who reported violations of law to the city's police department. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege the information at issue. Therefore, the city may withhold the information you indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We note, however, the requestor represents the Texas Department of Family and Protective Services. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos.

655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. Thus, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release the submitted information to the requestor. We note release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Therefore, the city does not waive its interest in withholding this information by exercising its discretion under the interagency transfer doctrine.

In summary, the city has the discretion to release the submitted information to the requestor under the intergovernmental transfer doctrine. If the city chooses not to exercise its discretion under the intergovernmental transfer doctrine, then, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city may withhold the information you 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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/jxd

Ref: ID# 980723

Enc. Submitted documents

c: Requestor
(w/o enclosures)