



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 3, 1998

Mr. Tommy Lueders
Assistant City Attorney
City of Midland
406 East Illinois
Midland, Texas 79702-1152

OR98-2576

Dear Mr. Lueders:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119200.

The City of Midland (the "city") received a request for information concerning a report of a disturbance, including the name of the complainant who called the police to report the disturbance. You assert that the complainant's identity is protected from disclosure under the informer's privilege as protected under section 552.101 of the Government Code. You also assert that the report and a tape recorded call from the complainant are protected from disclosure under section 552.108 of the Government Code. You submitted a copy of the tape-recorded call and the report to this office for review.

You assert that section 552.108 protects the tape recording and the submitted police report in their entirety from disclosure. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You explain that the investigation concluded but that it did not result in a conviction or deferred adjudication. We agree that you have shown the applicability of section 552.108(a)(2) to the tape recording.

However, the report at issue, titled "Exhibit B" appears to contain only front page offense report information. We note that section 552.108(c) provides that basic offense report information is not protected from disclosure under section 552.108. Basic information is the type of information that is generally included on the front page of an offense report, including a detailed description of the incident. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [15th Dist.] 1975), *writ ref'd n.r.e. per curiam*, S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Included in the categories of information usually open to the public are a detailed description of the incident, the location of the incident, and the identification and description of the complainant. *Id.*

This office has found special situations in which front page offense or incident report information may be held from required public disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Also, in Open Records Decision No. 333 (1982), this office agreed that certain front page arrest report information could be withheld from disclosure because the information in question identified certain individuals as being informants and potential informants. *Id.* at 2. Some of the front page information specifically identified individuals being considered by the vice division in targeting certain locations. *Id.*

In this situation, you seek to withhold the identity of the complainant, who reported a disturbance between two other people and a resulting incident that involved the complainant. As we have discussed, the identity of a complainant is generally public information that must be released. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You seek to withhold the information which identifies the complainant on the grounds that he is an informant. Texas courts have recognized the informer's privilege, *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), and it is a well-established exception under chapter 552. Open Records Decision No. 549 (1990) at 4. However, based upon the information provided to this office, we do not think that you have shown the special circumstances sufficient to overcome the presumption of public access to the front page information in the submitted police report. Thus, you must release the police report provided to this office, including the identity of the complainant.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

Ref: ID# 119200

Enclosures: Submitted documents

cc: Ms. Cynthia Lindsay
2309 College
Midland, Texas 79701
(w/o enclosures)