



November 12, 1999

Ms. Elizabeth Elam
Taylor, Olson, Adkins, Ssralla & Elam, L.L.P.
500 Throckmorton Street
3400 Bank One Tower
Fort Worth, Texas 76102-3821

OR99-3223

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130215.

The City of Southlake (the "city") received a request for "all written information in regard to" a particular file, "including complaint." You argue that the information is excepted from required disclosure under section 552.108 of the Government Code. You also argue that the information may be withheld under section 552.101 of the Government Code in conjunction with the informer's privilege. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.108 provides in pertinent 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]

(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 [.]

...

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108(a)(1),(b)(1); 552.301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested information relates to a pending criminal investigation, and its release "would interfere with the detection, investigation, or prosecution of a crime." We conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 127 (1976). You therefore may withhold most of the requested information at this time pursuant to section 552.108(a)(1).

However, section 552.108(c) requires public disclosure of "basic information about an arrested person, an arrest, or a crime." The city is required to release such basic information, often referred to as "front page" offense report information, in accordance with *Houston Chronicle*, 531 S.W.2d 177. *See also* Open Records Decision No. 127 (1976). "Front page" offense report information includes but is not limited to the time and place that an offense occurs; the property and vehicles involved; a detailed description of the offense; the name, occupation, and description of the arrested person; and the identification and description of the complainant.

Because you also raise an exception based on the informer's privilege, we must examine if information otherwise required to be disclosed may be withheld through that exception. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identity of a person who reports to a governmental body activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 2 (1978). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

The informer's privilege does not, however, categorically protect from release the identification and description of a complainant, which is "front page" offense report information generally considered public by *Houston Chronicle*. *See* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which "front page" offense report information may be withheld from 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. Open Records Decision No. 366 (1983); *see* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977) (identifying information about individuals may be withheld only upon a demonstration of “truly exceptional circumstances such as, for instance, an imminent threat of physical danger”), 123 (1976).

Based on the information provided to this office, we believe that you have shown exceptional circumstances that overcome the presumption of public access to the identifying information. Consequently, we conclude that the city must release only the “front-page” information which does not identify the complainant. The city may withhold the remainder of the requested information from required public disclosure pursuant to section 552.108(a)(1) of the Government Code. We note that a complainant’s telephone numbers are generally not front page offense report information, so need not be disclosed.

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.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/ch

Ref: ID# 130215

Encl. Submitted documents

cc: Mr. G.W. Bruce
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(w/o enclosures)