



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2010

Ms. Charlotte L. Staples
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Attorneys for City of North Richland Hills
6000 Western Place Suite 200
Fort Worth, Texas 76107-4654

OR2010-05111

Dear Ms. Staples:

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# 375540.

The City of North Richland Hills (the "city"), which you represent, received a request for all documentation pertaining to cause number H10001. You claim that a portion of the requested information is not subject to the Act. Additionally, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state the documentation pertaining to cause number H10001 is part of the requestor's court file. Thus, we understand you to represent that a portion of the requested information is a judicial record maintained by the city's municipal court. We note that records of the judiciary and are not subject to the Act. *See* Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary). Therefore, the city need not release information maintained by the city's municipal court in response to this request.¹ However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision

¹ We note records of the judiciary may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

No. 561 at 8 (1990). In this instance, you state that the city believes the requestor also intended to seek non-judicial records related to cause number H10001, and you have submitted responsive records to this office for review. Accordingly, we will consider your arguments for the submitted information.

You claim the submitted information is subject to section 552.108 of the Government Code. Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the submitted information pertains to pending criminal violations that have not resulted in convictions. Based upon this representation, we conclude the release of the submitted information 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), *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). Thus, section 552.108(a)(1) is generally applicable to the submitted information.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Such basic information includes a detailed description of the offense and the identity of the complainant. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, the city must release basic information, even if it does not literally appear on the front page of an offense or arrest report. *See id.* You claim, however, that the identifying information of the informant contained within the basic information may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Accordingly, we will address your argument under this exception.

Section 552.101 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 the identities of persons who report 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. *See* Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The 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.” *See* Open Records Decision No. 279 at 2

(1981) (citing Wigmore, Evidence, § 2374, at 767 (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 4-5. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990). The informer's privilege does not apply if the subject of the information already knows the informer's identity. ORD 208 at 1-2.

You state, and the submitted information reflects, that the complainant reported a violation of Dog at Large under article XII, section 14-395 of chapter 14 of the North Richland Hills City Code. You further state the reported violation is a misdemeanor punishable by a fine. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Thus, based on your representations and our review, we conclude that in releasing basic information, the city may withhold the complainant's identifying information, which you have marked, 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, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code; however, in releasing basic information, the city may withhold the complainant's identifying information, which it has marked, under section 552.101 in conjunction with the common-law informer's privilege. The remaining basic information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 375540

Enc. Submitted documents

c: Requestor
(w/o enclosures)