



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2012

Mr. Bret L. Strong
The Strong Firm
10003 Woodloch Forest Drive, Suite 210
The Woodlands, Texas 77380

OR2012-00471

Dear Mr. Strong:

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# 446833.

The Woodlands Fire Department (the “department”), which you represent, received a request for information pertaining to a specified fire. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 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, for prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably 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). We note, for purposes of section 552.108, the arson investigation division of a fire department is considered a law enforcement unit. *See Open Records Decision No. 127 at 8 (1976)*. You state the submitted information relates to a pending criminal arson investigation. Based on this representation and our review, 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) (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.

We note that 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. The department must release basic information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report. We note that basic information includes a detailed description of the offense, but does not include the identity of a victim or witnesses. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We also note basic information includes an identification and description of the complainant. See ORD 127. Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We understand you to contend, however, some of the basic information is excepted from disclosure under the informer’s privilege and section 552.101 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. The common-law informer’s privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. 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). This 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 that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). You state the complainant reported a possible violation of the law to the department. Thus, we conclude that the department may withhold the complainant’s identity, which we 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 department may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹ In releasing basic information, the department may withhold the identity of the complainant under section 552.101 of the Government Code in conjunction with the informer’s privilege.

¹As our ruling is dispositive, we do not address your remaining argument against disclosure for this information, except to note that, generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 446833

Enc. Submitted documents

cc: Requestor
(w/o enclosures)