



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2013

Ms. Julie P. Doshier
Counsel for the City of Richardson
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza, 500 North Akard
Dallas, Texas 75201

OR2013-00644

Dear Ms. Doshier:

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# 476135 (City File No. 12-489; NJDHS Reference No. 57990).

The City of Richardson (the "city"), which you represent, received a request for a specified complaint and any complaints against a specified address during a specified time period. You state you will redact information under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).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(b)(2) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(b)(2) is applicable to the submitted information.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *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). Basic information includes an identification and description of the complainant and a sufficient portion of the narrative to include a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976). Thus, with the exception of basic information, the city may withhold the submitted information from disclosure based on section 552.108(b)(2).

You contend the identity of the complainant is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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. Section 552.101 encompasses 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 (1988), 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 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 4-5.

You state the information you have marked identifies an individual who reported alleged criminal violations to the city's Community Services Department, which has the authority to investigate, enforce, and file Class C criminal complaints for violations of the city's Code of Ordinances. There is no indication the subject of the complaint knows the identity of the complainant in the submitted information. Based on your representations and our review, we conclude the city may withhold most of the basic information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate the remaining basic information you

seek to withhold, which we have marked for release, identifies an individual who reported a violation, and this information may not be withheld on that basis.

In summary, except for basic information, which must include a sufficient portion of the narrative to include a detailed description of the offense, the city may withhold the submitted information under section 552.108(b)(2) of the Government Code. In releasing basic information, with the exception of the information we have marked for release, the city may withhold the information you have marked 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 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 476135

Enc. Submitted documents

c: Requestor
(w/o enclosures)