



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 3, 2014

Ms. Evelyn W. Kimeu  
Staff Attorney  
Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2014-03699

Dear Ms. Kimeu:

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# 515436 (HPD ORU No. 13-7357).

The Houston Police Department (the "department") received a request for (1) a copy of each letter sent or received by the Differential Response Team of the department's North Police Command Station ("DRT") regarding any apartment complex during the specified time period, (2) a copy of any search warrant and supporting documentation for any apartment complex during the specified time period, (3) a copy of all field notes and any photographs taken by the DRT for any apartment complex during the specified time period, (4) a copy of each DRT Inspection Form for any apartment complex during the specified time period, (5) a list of the members of the DRT during the specified time period, and (6) the most recent documents explaining the purpose of the DRT. You state you will release some of requested information to the requestor. You claim portions of the submitted information are 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 representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the requested information may have been the subject of previous rulings from this office. In Open Records Letter No. 2013-16770 (2013), this office ruled the City of Houston (the "city") may withhold the information they marked under section 552.101 of the Government Code in conjunction with common-law informer's privilege. In Open Records Letter Ruling No. 2013-14955 (2013), this office ruled the department may withhold the submitted information under section 552.108(a)(1) of the Government Code with the exception of citations, DRT Inspection Forms, and basic information. We have no indication the law, facts, or circumstances upon which the prior rulings were based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the department must continue to rely upon Open Records Letter No. 2013-16770 and Open Records Letter No. 2013-14955 as previous determinations, and withhold or release the previously ruled upon information in accordance with them. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior rulings, we will consider the exceptions you raise.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which 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). The informer's 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 the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's 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." Open Records Decision No. 279 at 1-2 (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 (1988).

You state the information you have marked in Exhibit 2 reveals the identities of complainants who reported possible violations of state law and city ordinances that carry criminal penalties to police officers of the department, which are authorized to enforce the laws and ordinances at issue. There is no indication the subject of the complaint knows the identities of the complainants. Based on your representations and our review, we conclude the information we have marked identifies the complainants; thus, the department may withhold the information we have marked in Exhibit 2 under section 552.101 in conjunction

with the common-law informer's privilege. However, you have failed to demonstrate the remainder of the information at issue in Exhibit 2 consists of the identifying information of an individual who made the initial report of a criminal violation to the department for purposes of the informer's privilege. Accordingly, the department may not withhold the remaining information in Exhibit 2 under section 552.101 on that basis.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if (1) release of the information would interfere with the detection, investigation, or 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). You state Exhibits 3 and 4 regard ongoing criminal investigations, and release of the information would interfere with the detection and investigation of crime. You state, and provide supporting documentation, Exhibit 5 relates to an open case with the City of Houston Municipal Court, and release of the information would interfere with the prosecution of the case. We note, however, Exhibit 5 includes notices of violations. Because copies of the notices of violations have been provided to the defendant, we find the release of the notices of violations will not interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). Accordingly, the notices of violations, which we have marked, may not be withheld under section 552.108 of the Government Code. Based on upon these representations, we conclude the release of the remaining information in Exhibits 3, 4, and 5 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 [14<sup>th</sup> 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).

Section 552.108 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*. *See* 531 S.W.2d 177 at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of the notices of violations we have marked for release and basic information, the department may withhold Exhibits 3, 4, and 5 under section 552.108(a)(1) of the Government Code.

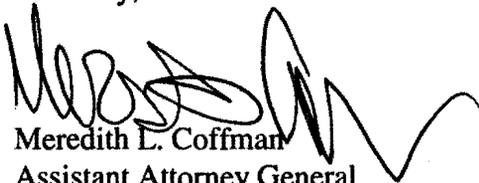
In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the department must continue to rely on Open Records Letter Nos. 2013-16770 and 2013-14955 as previous determinations, and withhold or release the previously ruled upon information in accordance with them. The department may withhold the information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exceptions of the notices of violations and basic information, the department may withhold Exhibits 3, 4, and 5

under section 552.108(a)(1) of the Government Code. The remaining 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 515436

Enc. Submitted documents

c: Requestor  
(w/o enclosures)