



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2014

Ms. Erin A. Higginbotham
Counsel for the City of Copperas Cove
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.
2500 West William Cannon, Suite 609
Austin, Texas, 78745-5320

OR2014-05032

Dear Ms. Higginbotham:

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# 518538.

The City of Copperas Cove (the "city"), which you represent, received two requests from the same requestor for information pertaining to a specified incident. The city claims the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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). Subsection 552.108(b)(2) protects internal law enforcement and prosecution records that relate to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a criminal case that concluded in a result

other than conviction or deferred adjudication. Therefore, we agree section 552.108(b)(2) is applicable to this information.

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). 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 the identification and description of the complainant. Open Records Decision No. 127 at 3-4 (1976). Thus, with the exception of the basic front-page offense and arrest information, the city may withhold the submitted information under section 552.108(b)(2).¹

You seek to withhold the identifying information of a complainant from the basic information 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g.*, *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). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state the basic information contains the identifying information of a complainant who reported possible criminal activities to the city's police department. Based on your representations, we conclude the city may withhold the basic information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

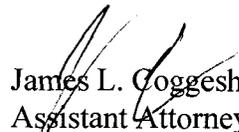
¹As we are able to resolve this matter under section 552.108, we do not address your other arguments, except to note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code.

To conclude, with the exception of basic information, the city may withhold the submitted information under section 552.108(b)(2) of the Government Code. However, in releasing the basic information, the city may withhold the basic information you have marked under section 552.101 of the Government Code in conjunction with the informer's privilege.²

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, 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,


James L. Goggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 518538

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. However, the requestor has a right of access to his own social security number pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).