



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2015-06105

Dear Ms. Sims:

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# 558000 (Lubbock File No. 1083).

The Lubbock Police Department (the "department") received a request for all police reports and call sheets related to a specific address during a specified time frame.¹ The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming

¹We note the department received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). The department states the submitted information relates to closed criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude that section 552.108(a)(2) is applicable.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such 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). We note basic information includes, among other items, the identity of the complainant. *See* Open Records Decision No. 127 (1976). Accordingly, except for the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

Next, we address the department's remaining claim under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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. The informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *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). It 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). 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 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 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. However, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

The department indicates the basic information reveals the identities of complainants who reported possible violations of law to the department. The department indicates the reported possible violations carry criminal penalties. There is no indication the subjects of the complaints know the identities of the complainants. Based on the department's

²As our ruling is dispositive, we need not address the department's remaining argument against disclosure of this information.

representations and our review, we conclude the department may withhold the identifying information of the complainants in the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, the remaining basic information does not identify informers for the purposes of the informer's privilege. Accordingly, the department may not withhold any of the remaining basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, except for the basic information, which must be released, the department may withhold the submitted information, under section 552.108(a)(2) of the Government Code. When releasing basic information, the department may withhold the identifying information of the complainants under section 552.101 of the Government Code.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 558000

Enc. Submitted documents

c: Requestor
(w/o enclosures)