



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

Mr. Galen Gatten
Assistant City Attorney
Office of the City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-08136

Dear Mr. Gatten:

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# 561511 (City Request Nos. W040236, W040255, W040258, W040260, W040279, W040280, W040298, W040375, and W040430).

The City of Fort Worth (the "city") received nine requests from different requestors for information related to a specified incident. You state the city has released some information to some of the requestors. We understand the city will redact certain criminal history record information pursuant to the previous determination issued to the city in Open Records Letter No. 2013-22304 (2013).¹ We also understand the city will withhold certain marked information under sections 552.130(c) and 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108

¹Open Records Letter No. 2013-22304 is a previous determination issued to the city authorizing it to withhold Federal Bureau of Investigation numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the necessity of requesting an attorney general decision.

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *Id.* § 552.147(b).

of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by two of the requestors. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note some of the requestors at issue only sought video recordings related to the specified incident. Accordingly, we find any additional information is not responsive to these requests. Therefore, the city need not release any information to the requestors who only sought video recordings related to the specified incident that is not responsive to their requests.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide a representation from the city’s police department stating the submitted information relates to a pending criminal investigation or prosecution. Based on this representation and our review, we conclude the release of this 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). Therefore, we find section 552.108(a)(1) is applicable to the submitted information.

However, we note 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes the identity of the complainant. *See* ORD 127 at 4. Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.⁴

³We note you also claim the informer’s privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Gov’t Code § 552.022(a). In this instance, section 552.022 is not applicable to the information you seek to withhold under the informer’s privilege and, therefore, we do not address your argument under rule 508.

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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. You claim some of the basic information is protected by section 552.101 in conjunction with 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 a 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 Nos. 515 at 3 (1998), 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 involve a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5*. The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. *See Open Records Decision No. 549 at 5 (1990)*.

You seek to withhold identifying information of an individual who reported possible violations criminal law, which, under section 12.22 of the Texas Penal Code, are punishable by a fine and/or confinement. You state the individual reported the possible violations to city officers charged with enforcement of the applicable law. We have no indication the subject of the information knows the identity of the informer. Based on your representations and our review, we agree the city may withhold the identifying information of the complainant, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.⁵ However, we find you have failed to demonstrate the remainder of the information you have marked identifies an individual who made a report of a criminal violation to the city for purposes of the informer’s privilege. Accordingly, the city may not withhold the remaining information you have marked under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You claim the remaining basic information is subject to the doctrine of common-law privacy. Upon review, we find you have failed to demonstrate how any of the remaining basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city

⁵As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

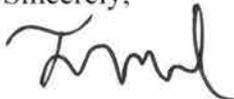
may not withhold any portion of the remaining basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code; however, the city need not release information to the requestors who only sought video recordings related to the specified incident that is not responsive to their requests. In releasing basic information, the city may withhold the information we 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 561511

Enc. Submitted documents

c: Requestors
(w/o enclosures)