



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2015

Mr. David T. Ritter
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-08857

Dear Mr. Ritter:

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# 562642 (ORR# 10-13644, 15-14196, 15-14311, 15-14312, 15-14314, 15-14315 and 15-14316).

The City of McKinney (the "city"), which you represent, received eight requests from three requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portions of one of the requests seeking a duty roster for the officers and supervisors on duty at the time of the incident, as well as police procedures and the written policy regarding the impound of a motor vehicle. To the extent any information responsive to these portions of this request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the third requestor seeks, in part, all audio and video recordings from two named police officers' dash cameras and body cameras. Thus, the submitted video recordings pertaining to another officer, which we have indicated, are not responsive to the third requestor's requests. The city need not release the video recordings we have indicated to the third requestor.

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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 some of the submitted information pertains to an incident that is open and pending investigation and possible prosecution. Based on your representations and our review, we find the release of this information, which we have marked and indicated, 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, we note, and you acknowledge, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes a detailed description of the offense, but does not include motor vehicle record information subject to section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information, the city may withhold the information we have marked and indicated under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). You state, and we agree, the remaining video recordings and one of the submitted audio recordings contain motor vehicle record information subject to section 552.130. You also state the city lacks the technological capability to redact the motor vehicle record information from these recordings. Based on this representation, we conclude the city must withhold the video recordings we have indicated in their entireties under section 552.130. *See* Open Records Decision No. 364 (1983). However, because the city had the ability to copy the submitted audio recordings in order to submit the requested information for our review, we believe the city has the capacity

to produce copies of only the non-confidential portions of the audio recording at issue. Further, we note section 552.130 protects personal privacy, and the audio recording at issue includes motor vehicle record information belonging to the third requestor. Thus, the third requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from him under section 552.130. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the city must withhold the motor vehicle record information we have indicated in the audio recording at issue from the first and second requestors under section 552.130 of the Government Code. *See id.* Further, the city must withhold from the third requestor the motor vehicle record information in the audio recording at issue to which he does not have a right of access, which we have indicated, under section 552.130 of the Government Code. However, the city may not withhold any of the remaining information under section 552.130 of the Government Code.

You seek to withhold the remaining information and portions of the basic information under section 552.101 of the Government Code in conjunction with the 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. This section encompasses information protected by the common-law 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 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 report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at (1990), 515 at 3-4. The privilege affords protection to individuals who report violations of statutes to criminal 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 privilege protects an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state the remaining information and portions of the basic information identify individuals who provided the city with information regarding a specific alleged violation of law, as well as other potential violations of the law. You do not indicate, nor does it otherwise appear, the subject of the complaint knows the identities of these individuals. Based on your representations and our review, we find you have demonstrated the

applicability of the common-law informer's privilege to the information at issue. We note some of the individuals' identifying information is contained in the audio recordings at issue, and you claim the city does not have the technological capability to redact this information from the audio recordings at issue. However, as noted above, because the city had the ability to copy the audio recordings at issue in order to submit the requested information for our review, we believe the city has the capability to produce redacted copies of the audio recordings at issue. In some circumstances, however, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). Accordingly, the city may withhold the audio recordings we have indicated in their entireties under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Further, the city may withhold the identifying information of the individuals at issue, which we have marked and indicated, in the basic information and in the remaining audio recording at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate how any portion of the remaining information reveals the identity of an informer for purposes of the informer's privilege. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of basic information, the city may withhold the information we have marked and indicated under section 552.108(a)(1) of the Government Code. Under section 552.130 of the Government Code, the city must withhold (1) the video recordings we have indicated in their entireties, (2) the motor vehicle record information we have indicated in the audio recording at issue from the first and second requestors, and (3) the motor vehicle record information we have indicated in the audio recording at issue from the third requestor. The city may withhold the audio recordings we have indicated in their entireties under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Further, the city may withhold the information we have marked and indicated in the basic information and in the remaining audio recording at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining information.

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,

A handwritten signature in cursive script, appearing to read "Alley Latham".

Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 562642

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)