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ATTORNEY GENERAL OF TEXAS

August 25, 2015

Fernando C. Gomez, JD, PhD
Vice Chancellor and General Counsel
Texas State University System
206 East 10th Street, Suite 600
Austin, Texas 78701-2407

OR2015-17752

Dear Dr. Gomez:

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# 576955 (Ref. No. 15043.9).

Texas State University (the "university") received a request for information pertaining to the arrest of a named individual. You state you will release some information to the requestor. You state you will withhold access device numbers pursuant to section 552.136 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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,

¹Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

²Although you do not raise sections 552.117 and 552.130 of the Government Code in your brief, we understand the university to assert these exceptions based on your markings. Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. *See* Gov't Code § 552.024.

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). The university states, and provides supporting documentation demonstrating, the information you have marked relates to an active criminal investigation with the university’s police department, and release of that information would interfere with the investigation and prosecution of the case. Upon review, we conclude the release of the information at issue 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 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, and the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.³

Section 552.101 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).

The university states the remaining information you have marked reveals the identity of an informer who reported alleged criminal activity to the university’s police department. There is no indication the subject of the complaint knows the identity of the complainant. Based on the university’s representations and our review, we conclude the information at issue identifies the complainant. Therefore, the university may withhold the remaining

³As our ruling is dispositive, we need not address the university’s remaining arguments against disclosure of this information.

information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.⁴

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find a portion of the information you have marked is not subject to section 552.130. Therefore, this information, which we have marked for release, may not be withheld under section 552.130 of the Government Code. However, we find the remaining motor vehicle record information you have marked must be withheld under section 552.130 of the Government Code.

In summary, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The university may withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of the information we have marked for release, the university must withhold the remaining motor vehicle record information you have marked under section 552.130 of the Government Code. The university 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

⁴As our ruling is dispositive, we need not address the university's remaining arguments against disclosure of this information.

Ref: ID# 576955

Enc. Submitted documents

c: Requestor
(w/o enclosures)