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ATTORNEY GENERAL OF TEXAS

August 28, 2015

Mr. Kyle O. Jones
Assistant District Attorney
Brazoria County, Texas
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2015-17997

Dear Mr. Jones:

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# 577329.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for call records related to a specified address for calls received on two specified dates and for all call records related to another address. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information. Although this information concerns calls related to the specified address, the calls were not received on the specified dates. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office need not release such information in response to this request.

Section 552.108(a) 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[.]" 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 information at issue 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, 710 (Tex. 1977). You state the records in Exhibit B relate to pending criminal investigations or prosecutions. Based on this representation, we conclude the release of the information in Exhibit B 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the information in Exhibit B.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the records in Exhibits C and D pertain to a cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the responsive information in these exhibits.

However, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other things, an identification and description of the complainant, but does not include the complainant's date of birth, or the complainant's telephone number or home address, unless the address is the location of the crime. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the sheriff's office may withhold the submitted responsive information under section 552.108(a)(1) and section 552.108(a)(2) of the Government Code.¹

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 of the Government Code 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 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. 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

¹In light of this conclusion, we need not address your section 552.101 claim for the submitted information to be withheld under section 552.108.

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 (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 4-5. 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 the informer’s identifying information from the basic information in several of the reports at issue based on the common-law informer’s privilege. We note, in some cases, the callers in the reports at issue alleged Penal Code violations. You state the sheriff’s office has no indication the subjects of the calls know the identities of the complainants. Based on your representation and our review, we conclude in releasing basic information from several of the reports, the department may withhold the caller’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, in the other reports, the caller does not allege a criminal or civil violation. Consequently, the sheriff’s office may not withhold the identifying information of the callers in the other reports based on section 552.101 and the informer’s privilege.

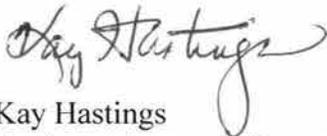
You also seek to withhold some of the basic information under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. See Open Records Decision No. 649 (1996). We understand Brazoria County (the “county”) is part of an emergency communication district that is subject to section 772.318. The sheriff’s office states the county has a population of approximately 300,000 and the addresses at issue were provided by a service supplier. Thus, provided the addresses the sheriff’s office marked were furnished by a service supplier, we determine the sheriff’s office must withhold the addresses of the 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

In summary, with the exception of basic information, the sheriff’s office may withhold the submitted responsive information under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff’s office must withhold the marked originating addresses of 9-1-1 callers furnished by a service provider based on section 552.101 in conjunction with section 772.318 of the Health and Safety Code, and may withhold the information we marked based on section 552.101 and the 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 577329

Enc. Submitted documents

c: Requestor
(w/o enclosures)