



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2015

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2015-18834

Dear Mr. Pittman:

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# 578478.

The Frisco Police Department (the "department"), which you represent, received two requests from the same requestor for information pertaining to a specified incident and all records pertaining to the requestor during a specified time period. 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.

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). The department states the information relating to the specified incident relates to an ongoing criminal investigation. Based on this representation and our 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.

Section 552.108, however, 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; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other categories of information, the identification and description of the complainant, but basic information does not include information subject to section 552.130 of the Government Code. See ORD 127 at 3-4. Thus, with the exception of basic information, the department may withhold the information you have indicated under section 552.108(a)(1) of the Government Code.¹

Section 552.101 of the Government Code 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 department indicates some of the basic information reveals the identity of a complainant who reported a possible violation of criminal law to the department. There is no indication the subject of the complaint knows the identity of the complainant. Upon review, we conclude the information we have marked within the basic information identifies the complainant; thus, the department may withhold the information we have marked within the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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

¹As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information.

excepted from public release. Gov't Code § 552.130(a). The video and audio recordings at issue contain motor vehicle record information subject to section 552.130. The department states it lacks the technological capability to redact the motor vehicle record information from these recordings. Based on this representation, we conclude the department must withhold the video recordings at issue in their entirety under section 552.130. *See* Open Records Decision No. 364 (1983). However, because the department had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the department must withhold the motor vehicle record information you have indicated in the audio recording under section 552.130 of the Government Code. However, the department may not withhold the remaining portions of the audio recording under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold the information you have indicated under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the video recordings at issue in their entirety under section 552.130 of the Government Code. The department must withhold the motor vehicle record information you have indicated in the audio recording under section 552.130 of the Government Code. The department 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 578478

Enc. Submitted documents

c: Requestor
(w/o enclosures)