



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2015

Ms. L. Carolyn Nivens
Paralegal for the City of Friendswood
Ross, Banks, May, Cron & Cavin, P.C.
Attorney for the City of Friendswood
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2015-20647

Dear Ms. Nivens:

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# 581592 (City Ref. No. W004845-071315, File Ref. 4396-001).

The City of Friendswood (the "city"), which you represent, received a request for all complaints and communications to the city from a specified individual, address, and phone numbers from December 2014 to the date of the request. You state you have released some information to the requestor. You claim some of 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.

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. This exception 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 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.

You seek to withhold the identity of an individual who reported possible violations of city ordinances to the city’s Code Compliance Department (the “department”). You state violations of the city ordinances can result in the imposition of a fine. You explain the department is the administrative authority with a duty of inspection under this ordinance. Upon review, we find you have demonstrated the applicability of the common-law informer’s privilege to the information at issue in Exhibit B. Therefore, the city may withhold Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]”¹ Gov’t Code § 552.108(a)(2). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. You state the city’s Animal Control Department (the “animal control department”) is a department within the city’s police department and the animal control department’s peace officers have the authority to enforce violations of the city’s code. Based on your representations, we find the animal control department is a law enforcement agency for purposes of section 552.108.

Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108(a)(2) must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state Exhibit A pertains to criminal investigations that concluded in results other than convictions or deferred adjudications. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to Exhibit A.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types

¹Although you cite to section 552.108(b)(2) of the Government Code, we understand you to raise section 552.108(a)(2) of the Government Code based on your arguments.

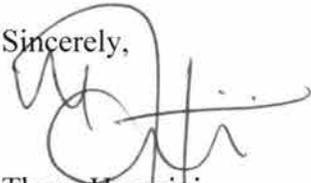
of information considered to be basic information). Thus, with the exception of basic information, the city may withhold Exhibit A under section 552.108(a)(2) of the Government Code.

In summary, the city may withhold Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of basic information, which must be released, the city may withhold Exhibit A under section 552.108(a)(2) of the Government Code.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/cbz

Ref: ID# 581592

Enc. Submitted documents

c: Requestor
(w/o enclosures)