



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2015

Mr. Nicholas Toulet  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2015-21765

Dear Mr. Toulet:

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# 584010 (City ID# 17329).

The City of Midland (the "city") received a request for a specified police report. You claim 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 552.108(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). The city states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of the submitted information 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 submitted information.

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*). We note basic information includes, among other items, an identification and description of the complainant. See ORD 127 at 3-4. Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We understand you to claim the basic information is excepted from disclosure in its entirety under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identity of a person who has reported 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 identity of an individual who has reported violations of statutes to the police or similar law-enforcement agencies, as well as an individual who has reported 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).

You seek to withhold the basic information in its entirety and state the submitted information reveals the identity of an individual who reported a violation of law to the city's police department. However, you inform us the subject of the complaint knows the identity of the complainant. Accordingly, we find you have failed to demonstrate the applicability of the common-law informer's privilege to the information at issue, and the city may not withhold any of the basic information under section 552.101 of the Government Code on that basis.

In summary, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) 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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 584010

Enc. Submitted documents

c: Requestor  
(w/o enclosures)