



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Ms. Veta J. Byrd-Pérez
Associate General Counsel
Office of the General Counsel
Rice University
P.O. Box 1892
Houston, Texas 77251-1892

OR2015-25465

Dear Ms. Byrd-Perez:

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# 589313 (ORR# 2015-010).

The Rice University Police Department (the "department") received a request for all information pertaining to case number 14-0145.¹ You claim some of the submitted information is not subject to release under the Act. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the 84th Legislature added section 51.212(f) of the Education Code, which reads as follows:

¹You state the department received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(f) A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of [the Act], only with respect to information relating solely to law enforcement activities.

Educ. Code § 51.212(f). You inform us the department is a campus police department of a private institution of higher education. *See id.* §§ 51.212(e), 61.003. Thus, you acknowledge the department is a governmental body for purposes of the Act, and information maintained by the department is subject to disclosure under the Act, to the extent such information relates solely to law enforcement activities. You state the information submitted as Exhibit 7 is maintained by the department. However, you argue Exhibit 7 does not relate “solely to law enforcement activities.” Rather, you argue the information relates to the “business operations” of the department. Upon review, we agree the information is administrative in nature and does not relate solely to law enforcement. *See id.* Accordingly, we find Exhibit 7 is not subject to disclosure pursuant to section 51.212(f), and need not be released to the requestor.

We will next address your arguments under the Act for the information submitted as Exhibit 4. 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). You state the information submitted as Exhibit 4 pertains to an open criminal investigation that is inactive pending additional information. Based on your representation, 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 that are 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.

However, we note, and you acknowledge, 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 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of the reporting party and the location of the incident. *See* ORD 127 at 3-4. However, the basic information does not include the identities of witnesses who are not the complainant and does not include motor vehicle record information subject to section 552.130 of the Government Code or e-mail addresses of members of the public. *See*

id. Thus, with the exception of the basic information, the department may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code.²

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. You raise section 552.101 in conjunction with the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. *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). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. *Open Records Decision No. 549* at 5 (1990). We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. *See ORD 208* at 1-2.

You state portions of the basic information identify a complainant who reported violations of law to the department. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer’s privilege to the information at issue. Therefore, the department may withhold the identity of the complainant, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

In summary, Exhibit 7 does not does not relate “solely to law enforcement activities,” is not subject to disclosure pursuant to section 51.212(f), and need not be released to the requestor. With the exception of the basic information, the department may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department may withhold the identity of the complainant, which we marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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,

A handwritten signature in cursive script, appearing to read "Claire Morris Sloan".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 589313

Enc. Submitted documents

c: Requestor
(w/o enclosures)