



May 16, 2000

Ms. Kristi DeCluitt
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2000-1938

Dear Ms. DeCluitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135264.

The City of College Station (the "city") received a request for all incident reports involving the 4900 through 5300 blocks of Raymond Stotzer Parkway from 1997 through 1999, and all reports involving a particular fraternity house during the same time period. You indicate that you have released to the requestor certain responsive information. You claim that the information you have submitted for our review is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure information made confidential by law or by judicial decision. It incorporates the "informer's privilege." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988);

191 (1978). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 (1978).

You seek to withhold, under the informer's privilege, certain responsive information identifying complainants. Having reviewed your arguments and the information at issue, we conclude that you may withhold the information you have marked in your Exhibit B. We understand that the remaining portions of the Exhibit B information have been released.

Section 552.101 also encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides that

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information here consists of "files, reports, records, communications, audiotapes, videotapes, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. Family Code §§ 261.001(1)(a)(C), 261.103(1). We believe subsection (a) is applicable to the information contained in Exhibit C. Thus, the city must withhold from the requestor Exhibit C in its entirety.

Section 552.101 of the Government Code also exempts from disclosure the information submitted as Exhibit "F," which consists of criminal history record information ("CHRI") generated by the Texas Crime Information Center ("TCIC"), the National Crime Information Center ("NCIC"), or the district attorney. The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI

from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Therefore, the city may not release to the requestor the information contained in Exhibit F.

You claim that Exhibits D and E are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

.....

(2) 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[.]

You submitted responsive offense/incident reports. You advise that the status of the case investigation for one set of related reports is “inactive” and for the remaining report is “complete,” that no criminal charges have been filed in these cases, and that further action will not be taken unless new evidence emerges. Based on your representations, we conclude that, except as noted below, you may withhold from disclosure Exhibits D and E under section 552.108(a)(2).

Please note that section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Because you have raised no other exceptions to disclosure of the reports, the city must release these types of information in accordance with *Houston Chronicle Publishing Company 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).

In conclusion, the informer’s privilege excepts from disclosure the information the city has marked in Exhibit B. You must withhold from disclosure Exhibits C and F in their entirety pursuant to section 552.101 of the Government Code. Exhibits D and E may be withheld pursuant to section 552.108(a)(2) of the Government Code, with the exception of basic offense information. Any remaining information that has not already been released or that does not fall within one of the above exceptions must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 135264

Encl. Submitted documents

cc: Mr. William A. LeBlanc
Pipkins Investigation Company
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(w/o enclosures)