



January 3, 2002

Ms. Cathy Duhart
Custodian of Records
Sinton Police Department
217 E. Market Street
Sinton, Texas 78387

OR2002-0029

Dear Ms. Duhart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156831.

The Sinton Police Department (the "department") received a request for 1) all incident, offense, supplemental and investigative reports, statements, photographs, and video tapes relating to a certain vehicle theft report, and 2) all incident, offense, supplemental and investigative reports, dispatch call sheets, and officer's field notes for three named individuals during a certain time period. You claim that the requested 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 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. *See United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). Thus, when a requestor asks for all information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* In this case, the second request item is for unspecified law enforcement records concerning the named individuals during a given period. Thus, the requestor's second request item seeks a compilation of the named individuals' criminal records as

contemplated by the Court in *Reporters Committee*. Because some of the individuals named in the second request item are possible suspects, arrestees, or defendants, the submitted information responsive to the second request item must be withheld in its entirety under section 552.101 and the common law right of privacy in accordance with the holding in *Reporters Committee*.¹

Next, we note that the remaining submitted information is subject to section 552.022 of the Government Code, which provides, in part, that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). As completed reports made by the department, the remaining requested information is thus public and must be released unless it is excepted from disclosure under section 552.108 or expressly confidential under other law.

You assert that the remaining submitted information "contains information exceeding the basic information not excepted from public disclosure by section 552.108(c) of the Texas Government Code." We understand you to claim exception from disclosure for the information responsive to request item 1 under section 552.108, which provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (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 a conviction or deferred adjudication[.]

¹Because section 552.101 is dispositive with respect to information responsive to request item 2, we do not address the department's other claims for that information.

With respect to the item 1 request, you do not explain how release of the responsive information would interfere with the detection, investigation, or prosecution of crime. Further, you fail to demonstrate that the responsive information pertains to a *closed* case that did not result in conviction or deferred adjudication. After review of your arguments and the information at issue, we find that you have failed to demonstrate the applicability of section 552.108 to the submitted information responsive to item 1 of the request, and conclude that the department may not withhold that information from disclosure under section 552.108.

You also claim that portions of the remaining submitted information are protected from disclosure under the informer's privilege. Texas courts have long recognized the common law informer's privilege, as incorporated into chapter 552 of the Government Code by section 552.101. *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); *see also Roviario v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege under *Roviario* exists to protect a governmental body's interest. Therefore, the informer's privilege under *Roviario* may be waived by a governmental body and is not other law that makes information confidential under section 552.022.² Therefore, the department may not withhold any of the remaining responsive information under the common law informer's privilege.

However, the informer's privilege is also found in rule 508 of the Texas Rules of Evidence. The Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Rule 508 provides, in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

Thus, an informer's identity is confidential under rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in rule 508(c). After a review of your arguments and the information responsive to request item 1, we conclude that the informer's privilege is applicable to the informants whose names you specify. Further, no rule 508(c) exceptions appear to apply. Therefore, the department may withhold the information that identifies the named individuals in the information responsive to request item one under rule 508.

Finally, you claim that the remaining submitted information contains motor vehicle information excepted from disclosure under section 552.130, which provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The department must withhold the vehicle identification number and license plate number contained in the remaining submitted information under section 552.130.

In summary, the department must withhold the submitted information responsive to request item 2 under section 552.101 of the Government Code and the common law right of privacy in accordance with the holding in *Reporters Committee*. In the submitted information responsive to request item 1, the department must withhold the auto license plate and vehicle identification numbers under section 552.130, and may withhold information that identifies certain informants under rule 508 of the Texas Rules of Evidence. Pursuant to section 552.022, the remaining submitted information 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).

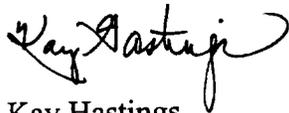
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/JSB/sdk

Ref: ID# 156831

Enc: Submitted documents

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