



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 5, 2002

Ms. Kelley S. Ripley  
Records Management Coordinator  
Irving Police Department  
P.O. Box 152288  
Irving, Texas 75015-2288

OR2002-6934

Dear Ms. Ripley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173192.

The Irving Police Department (the "department") received a request for nine categories of information related to a named individual's arrest and a motor vehicle accident. As responsive to the request, you have submitted to this office five categories of information pertaining to the arrest of an individual.<sup>1</sup> You claim that 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.

We first note that with respect to the categories of the request numbered 4, 5, 7, and 9, the only information you provide this office is a notation of "not applicable." You do not inform us whether the department holds any information that is responsive to these categories of the request, nor do you explain whether the department has released any such information. To the extent information responsive to categories 4, 5, 7, and 9 exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

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<sup>1</sup>The submitted information is not about an automobile accident and pertains to the arrest of an individual whose name differs from the original request. However, the copy of the request submitted to this office contains handwritten notations that appear to indicate the department obtained clarification from the requestor. *See* Gov't Code § 552.222. We thus assume that the submitted information is responsive to the request.

We next address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for an opinion *and state the applicable exceptions* not later than the tenth business day after receiving the written request for information. The department failed to state section 552.101 as an applicable exception to disclosure within ten business days after receiving the request for information.<sup>2</sup> Thus, the department did not comply with section 552.301 with respect to the section 552.101 assertion. Accordingly, in regard to this assertion, the information at issue "must be released unless there is a compelling reason" to withhold it. Gov't Code § 552.302.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim that identifying information "of a person [providing] information to the government about the commission of a crime" is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law informer's privilege. Generally, a claim under section 552.101 constitutes a compelling reason to withhold information that is sufficient to overcome the section 552.302 release requirement. *See, e.g.*, Open Records Decision No. 150 (1977). However, a claim of the common-law informer's privilege under section 552.101 may be waived by a governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 at 6 (1990). We conclude in this instance that your informer's privilege assertion under section 552.101 does not provide a compelling reason sufficient to overcome the section 552.302 release requirement. Thus, none of the submitted information may be withheld on that basis.

We next note that the submitted information includes information that is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. One such category is "information that is also contained in a public court record[.]" Gov't Code § 552.022(a)(17). We have marked two of the pages in the submitted documents that are indicated to be copies of court-filed documents. This information is subject to required release except to the extent it is expressly confidential under other law. You assert section 552.108 of the Government Code in support of withholding this information. Section 552.108, however, is a discretionary exception within chapter 552 of the Government Code and not "other law" that makes information confidential. Accordingly, none of the information in the court-filed documents may be withheld under section 552.108.

You also assert the informer's privilege under 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." *In re City of*

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<sup>2</sup>In this instance, the section 552.301(b) deadline was September 26, 2002, but the department did not raise section 552.101 until correspondence dated and postmarked October 3, 2002. *See* Gov't Code § 552.308.

*Georgetown*, 53 S.W.3d 328 (Tex. 2001). Therefore, we next determine whether you have shown any of the information in the court-filed documents to be confidential under Rule 508. 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 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).

In this case, we have no indication of the particular information that you claim is confidential under Rule 508. You do not specifically indicate that the department seeks to withhold under Rule 508 any of the information in the court-filed documents. You have not marked any such information as subject to Rule 508. *See* Gov't Code § 552.301(e)(2) (in submitting information to attorney general for open records ruling, governmental body must label information to indicate "which exceptions apply to which parts of the copy."). You also do not explain how or why any of the information at issue is protected by Rule 508. *See id.* § 552.301(e)(1)(A) (governmental body must submit to attorney general "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld"). We thus conclude that you have failed to demonstrate that the Rule 508 informer's privilege protects any of the information in the court-filed documents.

We note, however, that the court-filed documents contain an individual's driver's license number. Section 552.130 of the Government Code provides, in pertinent part, that information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state" is excepted from required public disclosure. *See* Gov't Code § 552.130. This exception makes information confidential, in that it is intended to protect individual privacy. We believe that section 552.130 qualifies as other law for purposes of section 552.022. Therefore, the department must redact the driver's license number that is contained in the court-filed documents in accordance with section 552.130. However, pursuant to section 552.022 of the Government Code, all of the remaining information in the court-filed documents must be released.

For the remaining information at issue, we turn now to your arguments under section 552.108. Section 552.108(a)(1) of the Government Code excepts from required public 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.” Section 552.108(a)(1) generally protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such 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 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You state that the case investigated in the submitted report is pending. Based on this representation and our review of the remaining information, we conclude, except as noted below, that the department may withhold the remaining submitted information from disclosure pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such 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). As no other exception has been demonstrated to apply to the basic information, it must be released. *See Open Records Decision No. 127 at 3-4 (1976)* (summarizing the information held to be public in *Houston Chronicle*). As to the information that you may withhold under section 552.108, we note that you also have the discretion to release all or part of this information to the extent it is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, except for the driver’s license number which must be redacted pursuant to section 552.130, the department must release the court-filed documents that we have marked in accordance with section 552.022(a)(17). The department may withhold the remaining submitted information from disclosure based on section 552.108(a)(1), with the exception of basic information, which the department must release.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 173192

Enc: Submitted documents

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(w/o enclosures)