



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2004

Ms. Maleshia Brown Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-0341

Dear Ms. Farmer:

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# 194506.

The City of Fort Worth (the "city") received a request for information regarding a complaint made against the requestor. You have already released some responsive information to the requestor. However, you claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that the release of the submitted records is governed by section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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). The investigation report that you submitted to this office pertains to a closed case and therefore constitutes a completed report or investigation for purposes of section 552.022(a)(1). Consequently, the city must release the submitted information unless it is expressly made confidential under other law or is excepted from

disclosure under section 552.108 of the Government Code.¹ However, because you contend that portions of the submitted information are excepted from required public disclosure under section 552.101 of the Government Code, we will address this claim.

You contend that some of the information contained in the submitted records is protected from disclosure under the common-law informer's privilege. The common-law informer's privilege, incorporated into the act by section 552.101,² has long been recognized by Texas courts. 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 *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The common-law informer's privilege exists to protect a governmental body's interest. Therefore, the common-law informer's privilege may be waived by a governmental body and is not "other law" that makes the information confidential under section 552.022. See Open Records Decision No. 549 at 6 (1990). Accordingly, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with the common-law informer's privilege.

However, the informer's privilege is also found in rule 508 of the Texas Rules of Evidence. Recently, the Texas Supreme Court 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 Georgetown*, 53 S.W.3d 328 (Tex. 2001). Consequently, we will determine whether the information you have highlighted is 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.

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

¹ We note that you have not raised section 552.108 for the submitted information. See Gov't Code § 552.022(a)(1).

² Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

of the exceptions to the privilege enumerated in rule 508(c). You state that the complaint concerns a violation of the city's animal ordinance, which can result in a class C misdemeanor. You state that the information for which you claim the informer's privilege relates to an investigation made by the city's animal control department, the administrative body that enforces the ordinance. However, you do not inform us, and it is not otherwise clear to this office, that any of the marked information relates to an individual who furnished information to a "law enforcement officer" for purposes of Texas Rule of Evidence 508. We therefore conclude that the city may not withhold any of the information marked in the submitted records pursuant to rule 508.

The submitted records do, however, contain information subject to section 552.137 of the Government Code. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address or Uniform Resource Locator, or the general e-mail address of a business. We further note that section 552.137 does not apply to e-mail addresses of the type described in section 552.137(c). The e-mail address that we have marked falls within the scope of section 552.137(a); section 552.137(c) is inapplicable. Therefore, unless the city has received affirmative consent to disclose the e-mail address, the city must withhold the marked e-mail address pursuant to section 552.137 of the Government Code. The remaining 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

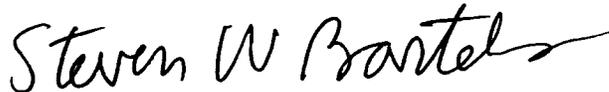
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dep't of Pub. 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,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 194506

Enc. Submitted documents

c: Mr. Larry Schrenk
9052 Elbe Trail
Fort Worth, Texas 76118
(w/o enclosures)