



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0143

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code.¹ We assigned your request ID# 28056.

The Department of Public Safety (the "department") received three open records requests for information pertaining to its 1984 investigation into the operation of the Travis County District Attorney's Office. In response to your request for an open records ruling, this office directed the department, in Open Records Letter No. 94-335 (1994), to withhold some of the requested information and to release some of the requested information. While preparing the documents for release, the department discovered the name of a confidential informer in a document and on an audiotape. The department apparently had not noticed the name before requesting the ruling in Open Records Letter No. 94-335, and the department did not ask this office to rule on the availability of this

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142. A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.* The requests for information at issue were received by the department prior to September 1, 1995.

information within the ten-day period required by section 552.301(a) of the Government Code. However, you now ask if you may withhold the identity of the informer under section 552.101 or section 552.108.

We conclude that you have demonstrated compelling reasons to withhold the identity of the informer. Normally, information is presumed to be public when a governmental body fails to request a decision within ten days of receiving a request for information. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show compelling reasons to withhold the information. *Hancock*, 797 S.W.2d at 381; Open Records Decision No. 552 (1990) at 1. A compelling interest may arise when a third-party's interests are at stake. Open Records Decision No. 552 (1990) at 1. You indicated that the informer's "name is linked to a drug investigation" and that releasing the informer's name "will seriously compromise the informer's effectiveness and be detrimental to the informant's life." Based on your representations, we conclude that you may withhold the informer's name under the "informer's privilege" as it is incorporated into section 552.101 of the Government Code. See Open Records Decision No. 434 (1986).

In your letter, you also note that the department has deleted from the requested records the addresses and social security numbers of governmental employees and the photographs, addresses, and driver's license numbers of peace officers. We note that you may withhold the addresses and photographs of licensed peace officers under sections 552.117(1)(B)² and section 552.119. However, you may withhold the addresses of governmental employees and the social security numbers of governmental employees and peace officers only under limited circumstances. See Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 599, 601, amended by Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 5, 9, 1995 Tex. Sess. Law Serv. 5127, 5130, 5132 (former Gov't Code §§ 552.024, .117(1)(A) (together providing that governmental employee's address may be withheld only if employee makes request under § 552.024)); Open Records Decision No. 622 (1994) (concluding that social security number is excepted from disclosure under § 552.101 in conjunction with 1990 amendments to federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), only when it is obtained and maintained pursuant to provision of law enacted on or after October 1, 1990). In addition, we are not aware of any provision of chapter 552 or any other law that permits you to withhold the driver's license numbers of specific individuals, including peace officers.

²Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 601, amended by Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127, 5132.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/LBC/ch

Ref: ID# 28056

Enclosures: Submitted documents

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