



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1996

Ms. Janet M. Dill
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR96-0508

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38781.

The Dallas Police Department (the "department") received a request for information relating to the murder of an individual. You claim that the requested information, with the exception of the autopsy report, the forensic report, and the first page of the offense report, should be excepted from required public disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth calendar day after the date of receiving the written request. The department received the written request for information on January 8, 1996. You did not request a decision from this office until February 13, 1996, more than ten days after the requestor's written request. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *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). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the

information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. Consequently, you may not withhold any of the requested information under sections 552.103 and 552.108 of the Government Code.

You also raise section 552.101¹ in conjunction with the common-law right of privacy and the informer's privilege. You contend that release of information attached as Exhibits 2 and 3 would disclose highly personal matters and may subject certain witnesses to retaliation and threats. You also claim that release of information attached as Exhibits 5 and 6 should be excepted from disclosure under the common-law right of privacy.

Initially, although Texas courts long have recognized the informer's privilege, *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), and it is a well-established exception under the Open Records Act, *see* Open Records Decision No. 549 (1990) at 4, the informer's privilege is really a governmental body's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officials having a duty of enforcing particular laws. *See id.*; *see also Roviario v. United States*, 353 U.S. 53 (1957). A claim under the informer's privilege is waivable by the governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 (1990) at 6. We conclude that the informer's privilege is not a compelling exception and, therefore, may not be used to withhold any of the requested information from required public disclosure under section 552.101.

For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. We have reviewed all the information submitted to this office and conclude that, except for certain information contained in exhibits five and six, none of the information is highly intimate and embarrassing and, therefore, may not be withheld under the common-law right of privacy and section 552.101.

With respect to exhibits five and six, we note initially that these exhibits are not responsive to the request as they do not relate to the incident in question. These exhibits are unrelated Texas Department of Public Safety Reports of Investigation regarding a family in Victoria, Texas whose only connection to the investigation in question is that the license plate number of one of their vehicles is similar to the one allegedly involved

¹Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

in this incident. Because we conclude that the information is not responsive, the department may withhold the information contained in these two exhibits. In addition to being unresponsive to the request, we conclude that these reports of investigation are replete with highly intimate and embarrassing information about this family for which there is no legitimate public interest. Moreover, exhibit 6 contains criminal history record information that appears to have been generated by the Texas Crime Information Center or the National Crime Information Center, the dissemination of which is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12; Gov't Code §§ 411.083(b)(1), 411.089(a), 411.089(b)(1). We conclude that you must withhold exhibits five and six from public disclosure under the common-law right to privacy and state and federal statutory law in conjunction with section 552.101 of the Government Code.

Finally, we conclude that compelling reasons do exist for withholding one document which makes reference to information acquired from a polygraph examination. V.T.C.S. article 4413(29cc), section 19A provides in pertinent part:

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Subsection (d), which specifies persons to whom information acquired from a polygraph examination may be disclosed, permits disclosure to the examinee or any other person specifically designated in writing by the examinee. Unless the examinee has specifically designated in writing the requestor as a person to whom information acquired from his polygraph examination may be disclosed, the department must withhold from the requestor the polygraph examinations and any information acquired from the examinations under V.T.C.S. article 4413(29cc), section 19A(b). We have marked the document which must be withheld under section 552.101 in conjunction with article 4413(29cc), section 19A.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 38781

Enclosures: Marked documents

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