



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1997

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR97-1072

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32627.

The Texas Department of Criminal Justice (the "department") received a request for the personnel file of the requestor. You state that most of the information "is available to the general public," except for employee social security numbers and home addresses.¹ However, you claim that certain information regarding the identities of inmates contained in the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code in conjunction with the informer's privilege. We have considered the exceptions you claim and reviewed the submitted information.²

The informer's privilege is incorporated into section 552.101 of the Government Code, which excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. The Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d

¹We note that Section 552.117(2) of the Government Code requires that the department withhold its peace officers' home addresses, telephone numbers, and social security numbers, and information that reveals whether the peace officer has family members.

²In your original request, you also asserted an exception under section 552.107. Because you have not explained how this section applies to except the requested information from disclosure, we cannot conclude that it applies. *See Gov't Code* § 552.301(b).

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, Open Records Decision No. 549 (1990) at 4. It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. Where statements evidence no wrongdoing or violation of law, they are not protected by the informer's privilege. Open Records Decision No. 549 (1990); and see Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by informer's privilege). The documents which you have submitted to this office do not allege any violation of a civil or criminal statute, but merely of a departmental policy. Therefore, we conclude that section 552.101 does not apply to these documents.

You also argue that the identifying portions of the requested documents may be withheld from disclosure by section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). You claim that releasing the identities of inmates will subject them to harassment and retaliation by prison staff and by other inmates. We conclude that the documents submitted to this office appear to relate only indirectly to law enforcement or prosecution. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from investigation of police officer for alleged misconduct, section 552.108 is inapplicable); Open Records Decision No. 350 (1982). Thus, the department may not withhold the requested information based on section 552.108 of the Government Code.

If the information submitted for our review contains criminal history record information ("CHRI") that is generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC") it must not be publicly released. The department must also withhold all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of

the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 32627

Enclosures: Submitted documents

cc: Ms. Brandi Barnard
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(w/o enclosures)

