



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1997

Mr. Robert Gracia
Chief of Police
2120 Fourth Street
Rosenberg, Texas 77471-5124

OR97-1964

Dear Gracia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108234.

The Rosenberg Police Department received a request for the requestor's "personnel file, including the complaints and charges which were grounds for my termination." You state that you will release the requestor's personnel file. You claim, however, that you may withhold the complaints and investigation witness statements. You argue that release of this material "might jeopardize the informants or otherwise compromise the investigation." You explain that the requested information relates to "an ongoing internal affairs investigation." We have considered the arguments that you have made and have reviewed the documents at issue.

You first claim that the complaints and statements may be withheld under section 552.108. 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). The information submitted to this office, however, only indirectly relates 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, you may not withhold the requested information based on section 552.108 of the Government Code.

You next claim that the requested information may be withheld to protect informants. The Texas courts have recognized the informer's privilege. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. In this instance, it does not appear nor have you shown how the informants have reported a violation of a criminal or civil statute. Thus, you must release the requested information.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 108234

Enclosures: Submitted documents

cc: Mr. Gary G. Dawson
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(w/o enclosures)