



April 21, 1999

Mr. Leonard Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77324-4004

OR99-1061

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123633.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the duty roster for the 2<sup>nd</sup> shift on January 5, 1999 and a copy of all I.O.C. about the requestor and the incident that occurred on the morning of January 6, 1999. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that the information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 reads in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

. . .

(b) An 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 is excepted from the requirements of section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

...

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You claim that section 552.108 protects the requested information from disclosure. A governmental body must explain how and why release would interfere with law enforcement if this claim is not apparent on the face of the submitted documents. Open Records Decision No. 434 (1986). You indicate that these files are not yet part of the investigative files of a criminal investigative agency, but that release of these statements could frustrate the investigation. You have not confirmed that there is a criminal investigation into this matter. We conclude that the information submitted may not be withheld from public disclosure pursuant to section 552.108. Open Records Decision Nos. 216 at 4 (1978), 133 at 3 (1976).

Next, you argue that the information is confidential pursuant to section 552.101 of the Government Code. You state that the complainant's identity in this case is protected by the "informer's privilege." The informer's privilege has been recognized by Texas courts. *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 at 3 (1988), 208 at 1-2 (1978). 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 at 2 (1981) (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 at 2 (1990), 515 at 4-5 (1988). After reviewing your arguments and the submitted documents, we conclude that you may not withhold the documents under the informer's privilege.

You additionally argue that certain information may be withheld because of safety concerns. We believe, from our review of the evidence and your arguments that "special circumstances" exist to withhold the names of the reporting officer on the interoffice communication. *See* Open Records Decision Nos. 123 (1976); 169 (1977). We have marked the information you may withhold.

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.

Sincerely,

*David Van Brunt Price*  
David Van Brunt Price  
Assistant Attorney General  
Open Records Division

DVP\nc

Ref: ID# 123633

Encl: Submitted documents

cc: Mr. Lee Spikes  
c/o TDCJ Human Resources  
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(w/o enclosures)