



June 1, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR99-1499

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124524.

The Travis County Sheriff's Department (the "sheriff") received a request for three incident reports. You indicate that you have released one of these reports but seek to withhold the remaining two. You claim that the subject information is excepted from public disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. 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. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with

Government Code chapter 411, subchapter F. You relate that certain responsive information is CHRI obtained from the Travis County Criminal Justice System. We have marked the information that appears to have been so obtained. We conclude that this information is confidential and must not be released.

Section 552.101 also encompasses information made confidential by court decision. 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. Open Records Decision No. 549 at 4 (1990). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978). Note that since this privilege protects the interest of the governmental body and not that of the informer, this privilege may be waived by the governmental body and, unlike other information protected by section 552.101, this information may be released without violating section 552.352 of the Government Code. *See* Open Records No. 549 (1990). We have marked the submitted documents to indicate the information excepted from disclosure by the informer's privilege.

Section 552.108 of the Government Code excepts certain information related to law enforcement. In pertinent part it reads:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(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:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or You assert that this information is therefore excepted from public disclosure under subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code.

You relate that the subject information relates to investigations that “did not result in conviction or deferred adjudication.” You contend that the information is therefore excepted from public disclosure by subsections 552.108(a)(2) and 552.108 (b)(2). You do not raise any other subsection of this statute. The provisions you raise apply to criminal investigations or prosecutions that have concluded. You do not indicate that these files are of concluded investigations or prosecutions. Further, the information includes a notation that “this case remains open pending further developments.” We conclude that you have not established that section 552.108 (a)(2) or 552.108(b)(2) excepts the subject information from disclosure.

The submitted documents include information excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records. Driver’s license numbers, VIN numbers, and the license plate numbers must be withheld pursuant to section 552.130.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 124524

Encl. Submitted documents

cc: Ms. Wanda Green
Northport Properties, Inc.
4111 Medical Parkway, #202
Austin, Texas 78756
(w/o enclosures)