

amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

Gov't Code § 552.222(b). Thus, if the city is uncertain about the scope of the request, it may ask the requestor to clarify the request and discuss with the requestor how the scope of the request might be narrowed. As you inform us that the requestor did not submit a clarified request as of the date of your submission to this office, you need not release information that may be responsive to the first category of requested information. Should the requestor submit such a clarification, however, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See also* Open Records Decision No. 663 (1999) (providing for tolling of the ten business day time limit to request attorney general decision while governmental body awaits clarification).

With regard to the second category of requested information, you tell us that you will make this information available to the requestor. You claim that the remaining category of requested information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

....

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.

Gov't Code § 552.022(a)(3) (emphasis added). The information you have submitted to this office consists of itemized cellular phone bills for three city police department investigators. We conclude that these bills, in their entirety, are "information in an account [or] voucher. . .

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

relating to the expenditure of public funds," and therefore, as prescribed by section 552.022, the bills must be released to the requestor unless they are expressly made confidential under other law.

You argue that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. Sections 552.103 and 552.108 are discretionary exceptions and not "other law" that makes information "expressly confidential" for purposes of section 552.022.² Therefore, you may not withhold the submitted information under these sections.

In addition, however, you raise the informer's privilege aspect of section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege, incorporated into the Public Information Act by section 552.101, has long been recognized by Texas courts. 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); see also *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege under *Roviaro* exists to protect governmental bodies' interests. Therefore, it may be waived by the governmental body. Open Records Decision No. 549 at 6 (1990). Consequently, the informer's privilege under *Roviaro* is not "other law" that makes the information confidential under section 552.022. But in the recent case of *In re The City of Georgetown*, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001) (No. 00-0453), the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." Rule 508 of the Texas Rules of Evidence provides, in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

You inform us that the city police department investigators use their phones in the detection and investigation of crime and in so doing, they make calls to and receive calls from witnesses, victims, suspects and confidential informants. Upon review of the submitted information, however, we note that it consists only of phone numbers, and in some cases, the city to which a call was made, and no other information that might identify an informer. Furthermore, you have not identified the phone numbers which belong to confidential informants, stating only that the identities of informants could be "deduced from" the phone numbers. Therefore, because the submitted information, without more, does not show the identity of a confidential informer, and because you have not explained how release of these numbers would show the identity of informants, we conclude that you may not withhold the submitted information under the informer's privilege aspect of section 552.101.

We do note, however, that section 552.117(1) of the Government Code requires that the city withhold its employees' and former employees' home addresses, telephone numbers, and social security numbers, and information that reveals whether the employee or former employee has family members, but only to the extent that the employees and former employees have elected to keep this information confidential in compliance with section 552.024. *See* Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request). Section 552.117(1) does not protect the names, home addresses, and telephone numbers of any other class of individuals. *See, e.g.*, Open Records Decision No. 455 (1987) (home addresses and telephone numbers of job applicants not protected under section 552.117). Section 552.117(2) excepts from required public disclosure information relating to the home address, home telephone number, and social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, as well as whether the peace officer has family members, regardless of whether the officer made an election under section 552.024. Therefore, if any of the numbers called by the three investigators are home telephone numbers of peace officers, or of current or former government employees who have timely made the election under section 552.024, you must withhold those telephone numbers from the requestor. *See* Open Records Decision No. 636 at 5 (1995). In addition, if any of the three investigators paid directly for the purchase, installation, and billing of the cellular phones which are installed in their private vehicles, then the numbers of the cellular phones belonging to the investigators must also be withheld from the requestor under section 552.117(2). *See* Open Records Decision No. 506 (1988) (interpreting predecessor to section 552.117).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



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Assistant Attorney General
Open Records Division

MAP/seg

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Encl. Submitted documents

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