



March 8, 2001

Mr. Phillips A. McKinney  
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P.O. Box 2728  
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OR2001-0916

Dear Mr. McKinney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144839.

The City of Beeville Police Department (the "department"), which you represent, received a request for the cellular phone bills of certain cellular phones used by department employees. The department claims that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). The information you have submitted to this office consists of cellular phone bills for certain department employees. We conclude that these bills, in their entirety, are "information in an account [or] voucher . . . 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, 552.108, and 552.117 of the Government Code. Section 552.108 is a discretionary exception and not "other law" that makes information "expressly confidential" for purposes of section 552.022.<sup>1</sup> Therefore, you may not withhold the submitted information under section 552.108.

In addition, you contend that certain personal phone numbers contained in the requested phone bills that belong to employees of the department, their families, other law enforcement agents working with the department, and confidential informants are "obviously protected by ... § 552.101." However, you do not cite to any particular constitutional or statutory provision or judicial decision that makes this information confidential by law. The only confidentiality provision we could glean from your arguments is the informer's privilege. 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 Roviario v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege under *Roviario* 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 *Roviario* 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*, No. 00-0453, 2001 WL 123933, at \*8 (Tex. Feb. 15, 2001), 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.

Thus, an informer's identity is confidential under Rule 508 if a governmental body demonstrates that an individual 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, and the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 508(c). Here,

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<sup>1</sup>Discretionary 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 have not demonstrated that any of the individuals whose phone numbers are listed in the bills furnished information relating to or assisting in an investigation of a possible violation of a law. Therefore, we do not believe that any of the phone numbers in the submitted phone bills are protected under Rule 508 of the Texas Rules of Evidence.

You also argue that the marked information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117 provides, in relevant part:

Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as provided by Section 552.024;
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

Thus, section 552.117(1) protects the home addresses and telephone numbers, social security numbers, and family member information of government employees, not including peace officers, who request that this information be kept confidential under section 552.024. On the other hand, peace officer's home addresses and phone numbers, social security numbers, and family member information must be withheld under section 552.117(2), regardless of whether an election was made to keep such information confidential under section 552.024. You indicate that the responsive information contains the personal phone numbers of department employees, their families, and other law enforcement agents. To the extent the requested information contains the home phone numbers of peace officers or their family members, this information must be withheld under section 552.117(2), regardless of whether an election was made by the officer to keep this information confidential. *See* Open Records Decision No. 670 at 6 (2001). To the extent the requested information contains the home phone numbers of department employees who are not peace officers, or their family members, you must withhold this information only if the employee elected to keep his or her home phone number confidential under section 552.024 of the Government Code prior to the date on which the request for this information was made. *See* Open Records Decision No. 530 at 5 (1989).

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).

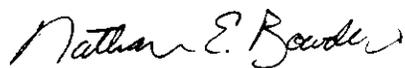
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/er

Ref: ID# 144839

Encl: Submitted documents

cc: Dr. Ysidro D. Arismendez III, J.D.  
P.O. Box 4071  
Beeville, Texas 78104  
(w/o enclosures)