



July 16, 2001

Ms. Sara A. Hartin  
City Attorney  
City of Copperas Cove  
P.O. Drawer 1449  
Copperas Cove, Texas 76522

OR2001-3071

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149694.

The City of Copperas Cove (the "city") received a request for a copy of the Fire Department's fire report concerning a house fire at a specified address that occurred on April 30, 2001. You inform us that the city has already released information responsive to the request. You claim that the caller's name, telephone number and address in the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. However, the submitted information does not contain the caller's address. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information includes information that is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law, or as provided by section 552.108. The submitted information consists of a completed report, which is expressly made public pursuant to section 552.022(a)(1). The information must therefore be released under section 552.022 unless the information is expressly made confidential under other law. You claim that some of the information is protected from disclosure under the informer's privilege. The informer's privilege, incorporated into the Public Information Act by section 552.101,<sup>1</sup> has long been recognized by Texas courts. *See Aguilar v. State*, 444

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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 a governmental body's interest. Therefore, the informer's privilege under *Roviario* may be waived by a governmental body and is not "other law" that makes the information confidential under section 552.022. Open Records Decision No. 549 at 6 (1990).

However, the informer's privilege is also found in Rule 508 of the Texas Rules of Evidence. Recently, 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." *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at \*8 (Tex. Feb. 15, 2001). Thus, we will determine whether the information is confidential under Rule 508.

Rule 508 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.

Accordingly, 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). You have not demonstrated that the 9-1-1 caller "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." Therefore, we do not believe that the identity of the person who furnished the information is protected under the informer's privilege as stated in Rule 508 of the Texas Rules of Evidence.

You further claim that the requested information is excepted from disclosure based on section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You inform us that the Fire Marshal's Office is a unit within the city's Fire Department, which has criminal enforcement authority for the enforcement of city ordinances and for certain violations of the Texas Penal Code regarding fires and fire protection. This office has previously found that an arson investigation unit of a fire

department is a law enforcement agency for purposes of section 552.108. Open Records Decision No. 127 (1996). Based on the information you provided, we understand you to assert that the requested information pertains to an investigation that concluded in a result other than conviction or deferred adjudication.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Guided by the *Houston Chronicle* decision, this office found that the press and public are entitled to access to information concerning fires in the community, including such information as the time of the occurrence, the fire department's response, the location of the fire, how and *by whom it was reported*, a description of the building, and an estimate of the amount of property damage. Open Records Decision 127 at 9 (1976)(emphasis added). Thus, with the exception of the basic front page offense information, including the name of the person who reported the fire, you may withhold from disclosure the highlighted portions of the requested information based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the caller's name must be released. The city may withhold the remaining information at issue under section 552.108.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 149694

Enc. Submitted documents

c: Ms. Carrie Surgeon  
305C Madison Avenue  
Fort Eustis, Virginia 23604  
(w/o enclosures)