



November 13, 2001

Ms. Barbara G. Heptig  
Assistant City Attorney  
City of Arlington  
P.O. Box 1065 - MS 04-0200  
Arlington, Texas 76004-1065

OR2001-5254

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154793.

The City of Arlington Police Department (the "department") received a request for a copy of a report from an internal affairs investigation of the requestor. You claim that portions of the requested information may be excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code makes certain information expressly public and therefore not subject to discretionary exceptions to disclosure. Section 552.022 provides in relevant part:

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

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108 . . . ." Gov't Code § 552.022(a)(1). We find that the information you seek to withhold is contained in documents subject to section 552.022(a)(1), and therefore, as prescribed by section 552.022, this information must be released to the requestor unless it is confidential under other law. You claim that some of the requested information is protected from disclosure under the informer's privilege. The informer's privilege, as 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 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. *See* 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. The Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information in question 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.

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). You question whether the identities of the witnesses in the internal affairs investigation are protected under the informer's privilege. The witnesses at issue answered questions about alleged violations of the department's personnel policies and operational procedures. You do not indicate, nor does it appear, that any of the witnesses reported violations of law. Therefore, we find that none of the submitted information is excepted from disclosure under Rule 508.

Nevertheless, we note that some of the submitted information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(1) on behalf of current

or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the department must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The department may not withhold this information under section 552.117(1) for those employees who did not make a timely election to keep the information confidential. We have marked the information that may be excepted from disclosure under section 552.117(1).<sup>1</sup>

The submitted information also contains driver's license numbers that the department must withhold under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state . . . .

We have marked the Texas driver's license numbers contained in the submitted information, which must be withheld under section 552.130.

In summary, you must withhold the marked employee home address and telephone number, social security number, and family member information under section 552.117(1) to the extent the employees timely elected to keep this information confidential under section 552.024 of the Government Code. You must withhold the marked Texas driver's license numbers under section 552.130 of the Government Code. You must release the remainder of the submitted information.

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

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<sup>1</sup>The requestor has a special right of access to her own home address and telephone number, social security number, and family member information. See Gov't Code 552.023. Therefore, you must release the requestor's own information to her. Nonetheless, because this information would be excepted from disclosure to the general public, the department should seek our opinion again if it receives a future request for this information from an individual other than the requestor.

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).

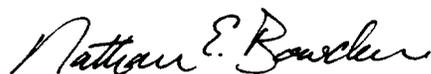
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. 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 Texas Building and Procurement 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/sdk

Ref: ID# 154793

Enc: Submitted documents

c: Ms. C.L. White  
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Arlington, Texas 76002  
(w/o enclosures)