



June 11, 2002

Mr. Miles T. Bradshaw
General Counsel
Houston Community College System
P.O. Box 667517
Houston, Texas 77266-7517

OR2002-3144

Dear Mr. Bradshaw:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164220.

The Houston Community College System (the "system") received a request for the following information:

1. A list of a [sic] HCC students who, since the founding of the [system], have been summarily dismissed from the [system] without benefit of "due process". [sic] This list should include the race and/or ethnicity of each person with [sic] this category.
2. The names and job titles of all people with the [system] who have told of "unfounded" and "malicious" allegations of "criminal" and/or "quasi-criminal" acts committed by me.
3. The names of any and all persons who purport to confirm that I have committed any "criminal" and/or "quasi-criminal" acts.
4. The names and job titles of all people outside of the employ of the [system] who have been informed of any "criminal" and/or "quasi-criminal" acts, committed by me.

5. Any evidences [sic] of the [system's] payment, of any type or denomination, to the person or persons making allegations that I committed "criminal" and/or "quasi-criminal" acts.

You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that you have not claimed an exception for, nor submitted information responsive to, category 1 of the request. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Thus, this ruling does not address such records, if any, that are responsive to category 1 of the request.

We next note that you have not submitted any information that is responsive to category 5 of the request. 552.301(e) of the Government Code requires a governmental body to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 301(e)(4). Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Because you have not submitted the information at issue, we have no basis for determining whether a compelling reason exists for withholding it. Thus, to the extent that it exists, we have no choice but to order the information that is responsive to category 5 of the request released pursuant to section 552.302. If you believe this information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352.

You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code in accordance with a previous determination of this

office. In Open Records Letter No. 2002-2210 (2002), we concluded that the system was required to withhold the submitted information under section 552.101 of the Government Code. We understand you to represent that the circumstances existing at the time of the issuance of this ruling have not changed and that, consequently, the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met in this situation. Therefore, in reliance on that representation, we conclude that the system may withhold the information that we have marked in accordance with Open Records Letter No. 2002-2210.¹ See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

We next address your section 552.101 argument for the remainder of the submitted information. You argue that the submitted information is protected from public disclosure by the informer's privilege. The informer's privilege, incorporated into the Public Information Act by section 552.101, has long been recognized by Texas courts.² 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). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

The purpose of the informer's privilege is to encourage persons to report possible misconduct and to protect informants from fear of retaliation. Open Records Decision Nos. 579 (1990), 377 (1983). The content of an informer's communication may be withheld where it is necessary to protect the informer's identity. Open Records Decision Nos. 582 (1990); 579 (1990); 549 (1990); 515 (1988); 377 (1983); 320 (1982); 285 (1981); 252

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

²Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(1980); 172 (1977). The entire statement of an informant may be withheld where it would tend to identify the informant. Open Records Decision No. 434 (1986).

You state that the submitted information consists of statements by an individual who reported violations of criminal law to the campus police. Based upon your arguments and our review of the submitted documents, we find that the information at issue is protected under the informer's privilege. Thus, the system may withhold the remainder of the submitted information in its entirety under section 552.101 in conjunction with the informer's privilege.

In summary, the system may withhold the information that we have marked in accordance with Open Records Letter No. 2002-2210. The remainder of the submitted information may be withheld in its entirety under section 552.101 in conjunction with the informer's privilege.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 164220

Enc. Submitted documents

c: Mr. Glen Johnson
5210 Pomander
Houston, Texas 77021
(w/o enclosures)