



October 14, 2002

Ms. Denise Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2002-5805

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170573.

The Richardson Police Department (the "department") received a request for information pertaining to calls for service related to various addresses on a particular road. You state that you have provided the requestor with some of the requested information. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code also excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions regarding criminal history information. Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential by statute. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. However, none of the submitted information appears to have been generated by either the NCIC or the TCIC. Consequently, chapter 411 is not applicable to the submitted information.

You next assert that one of the submitted offense reports is excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Service number 02-059459 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this service number is confidential pursuant to section 58.007(c) of the Family Code. You must withhold service number 02-059459 from disclosure under section 552.101 of the Government Code.

You argue that offense report number 02-044043 is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

Gov't Code § 552.108(a)(2). You indicate that service report number 02-044073 concerns a completed investigation that did not result in conviction or deferred adjudication. Accordingly, you may withhold service report number 02-044073 under section 552.108(a)(2).

We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report

information even if this information is not actually located on the front page of the offense report. *See Houston Chronicle Publ'g 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); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense).

You indicate that you have withheld from the requestor information that identifies the complainant in service report number 02-044073 because you believe the complainant is an informant. Information that identifies a complainant is front page offense report information that is generally considered public. The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976).

Although you refer to *Rovario v. United States*, 353 U.S. 53, 59 (1957), in which the United States Supreme Court explained the rationale underlying the informer's privilege, you make no arguments as to why special circumstances make the complainant's identifying information private in this instance. Nor do we discern, from our review of the submitted information, any reason why special circumstances exist. *See generally* Open Records Decision Nos. 515 (1988), 191 (1978) (when information does not describe conduct that violates law, informer's privilege does not apply). Furthermore, we are not persuaded that the complainant has a privacy interest in withholding his identity from the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (stating that common law privacy protects an individual's private affairs); *see generally* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982) (identities of sexual assault victims must be withheld under common law privacy). Thus, we conclude that the complainant's identifying information in service report number 02-044073 may not be withheld under section 552.101 or 552.108.

In summary, the department must withhold service number 02-059459 from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. The department may withhold service number 02-044073 from disclosure under section 552.108(a)(2), with the exception of basic information. The remaining information must be released to the requestor.

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 170573

Enc: Submitted documents

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(w/o enclosures)