



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 13, 2003

Ms. Myrna S. Reingold
Galveston County
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2003-0259

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174879.

The Galveston County Health District (the "district") received a request for information regarding a particular complaint. You state that you have released most of the responsive information. You claim that the remaining requested information, which consists of the identity of an informer, 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 note initially that some of the submitted information is subject to required public disclosure under section 552.022 of the Government Code. 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 not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains a completed investigation. Accordingly, the department must release exhibit 2 under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 or is expressly confidential under other law. You state that submitted information is excepted from release pursuant to the informer's privilege. The informer's privilege under *Roviaro v. United States*, 353 U.S. 53, 59 (1957), exists to protect a governmental body's interest. Therefore, the informer's privilege under *Roviaro* may be waived by a governmental body and is not other law that

makes information confidential under section 552.022. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city may not withhold any of the completed investigation under the common-law informer's privilege.

However, the informer's privilege is also found in rule 508 of the Texas Rules of Evidence. 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*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information you wish to withhold in the completed investigation 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 state that the informer whose identity you wish to withhold reported a possible violation of Chapter 341 of the Texas Health and Safety Code, violations of which constitute a criminal offense punishable by a fine and a possible prison sentence. *See* Health & Safety Code § 341.091(a). You also state, and the information shows, that the district acted on the informer's tip by conducting an investigation into the possible violation. However, you do not demonstrate, nor does it appear to this office, that this information was furnished 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 at issue is protected under the informer's privilege as stated in rule 508 of the Texas Rules of Evidence. Accordingly, we find that you may not withhold the identity of the informer contained in the submitted completed investigation, which we have marked, pursuant to rule 508 of the Texas Rules of Evidence.

We now consider whether you may withhold the informer's identity from the remaining submitted information that is not subject to section 552.022 pursuant to section 552.101 in conjunction with the common-law informer's privilege. Section 552.101 of the Government Code excepts information considered to be confidential by judicial decision. The informer's

privilege, incorporated into the 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). 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). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60.

You state that the informer whose identity you wish to withhold reported a possible violation of section 341.011 of the Texas Health and Safety Code, violations of which constitute a criminal offense punishable by a fine and a possible prison sentence. *See* Health & Safety Code § 341.091(a). However, the submitted information shows that the informer reported the alleged violation to the Texas Department of Health (the "department"). You have not demonstrated that the department has a duty of inspection or enforcement in this particular sphere. Accordingly, you may not withhold the identity of the informer contained in the information that is not subject to section 552.022 pursuant to section 552.101. Therefore, you must release the requested information in its entirety.

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

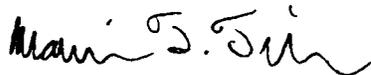
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/sdk

Ref: ID# 174879

Enc: Submitted documents

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(w/o enclosures)