



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 4, 2003

Ms. Amanda Crawford
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2003-1395

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177364.

The Office of the Attorney General (the "OAG") received a request for all complaints filed with the Consumer Protection Division for the Kid-Care Food Program, Inc. and the We Care About Kids Kid Care. You state that you have released one of the complaints. You claim, however, that all or portions of the three submitted exhibits are excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments explaining why responsive information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure information that is confidential by law. This office interprets this exception as incorporating the "informer's privilege." *See* Open Records Decision No. 515 (1988) (citing *Roviaro v. United States*, 353 U.S. 53 (1957)). The Texas courts have also recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege aspect of section 552.101 protects the identity of a person who reports a violation or possible violation of the law to officials charged with the duty of enforcing the particular law. The privilege protects individuals who report violations to administrative agencies having a duty

to enforce statutes with civil or criminal penalties. *See* Open Records Decision No. 515 at 2 (1988). The informer's privilege does not apply if the subject of the information already knows the informer's identity. Open Records Decision No. 208 at 1-2 (1978).

You explain that the informers allege that Kid Care, Inc. has violated multiple provisions of the Texas Nonprofit Corporations Act (the "Act"). V.T.C.S. art. 1396 § 1.01 - art. 1407(a). You further explain that the OAG, through its Charitable Trusts Section, is charged with the duty of enforcing the Act. You also indicate that violations of the Act can result in civil penalties. After reviewing the submitted arguments and the documents, we agree that the OAG has established the applicability of the informer's privilege to Exhibits B1 and B2. We also agree that releasing any of the information contained in these two exhibits would necessarily reveal the identities of these informants. Thus, the OAG must withhold Exhibits B1 and B2 in their entirety under section 552.101. On the other hand, after reviewing Exhibit B3, we find that the OAG has not demonstrated the applicability of the informer's privilege to this complainant's identifying information. The individual in this exhibit is actually complaining about the actions of the Harris County District Attorney and merely makes reference to the Kid Care investigation. Thus, we conclude that Exhibit B3 must be released.

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,

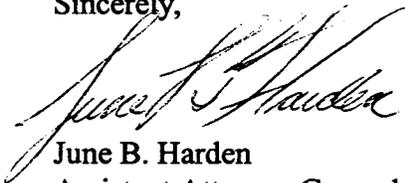
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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. 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 177364

Enc: Submitted documents

c: Mr. Bradley P. Levy
Executive Director
Kid Care, Inc.
P.O. Box 10441
Houston, Texas 77206
(w/o enclosures)