OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 15, 2003

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street
Dallas, Texas 75201

OR2003-3262

Dear Ms. Silver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181112.

The City of Dallas (the "city") received a request for "the name of the complaintant [sic] on a code violation" pertaining to the requestor's business. 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 note that the submitted records are governed by section 552.022 of the Government Code. Section 552.022 provides in pertinent 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) (emphasis added). The records you submitted to this office as Exhibit B constitute a completed report for purposes of section 552.022(a)(1). Consequently,

the city must release the submitted records unless they are expressly made confidential under other law or are excepted from disclosure under section 552.108 of the Government Code.[1]

You contend that some of the information contained in the submitted records is protected from disclosure under section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege, incorporated into the Public Information Act (the "Act") by section 552.101,[2] 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 Roviaro v. United States*, 353 U.S. 53, 59 (1957). The common-law informer's privilege under *Roviaro* exists to protect a governmental body's interest. Therefore, the common-law informer's privilege under *Roviaro* may be waived by a governmental body and is not "other law" that makes the information confidential under section 552.022. Open Records Decision No. 549 at 6 (1990). Accordingly, the city may not withhold any portion of the submitted report under section 552.101 in conjunction with 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 has 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). Consequently, we will determine whether the information you have highlighted 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.

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[1] We note that you have not raised section 552.108 for the submitted reports. *See* Gov't Code § 552.022(a)(1).

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

> (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.

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 report of an alleged violation of section 18-10 of the city code was made to the city's 3-1-1 operators "who then notified the City officials who are responsible for enforcing the laws in question," *i.e.*, the city's Department of Code Compliance. You further advise us that the "Department of Code Compliance has requested that the identity of the informant remain confidential." Based on our review of your arguments and the highlighted information at issue, we conclude that the highlighted information would 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. *See* Tex. R. Evid. 508. Further, it does not appear that any of the exceptions to the privilege enumerated in Rule 508(c) apply in this instance. Consequently, we conclude that the highlighted information is excepted from public disclosure pursuant to Rule 508 of the Texas Rules of Evidence.

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).

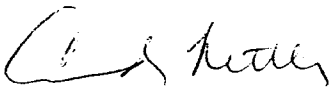
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 181112

Enc. Submitted documents

c: Ms. Iris Smith
Oak Cliff Floral Company
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Dallas, Texas 75203
(w/o enclosures)