



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2003

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

OR2003-5661

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# 185891.

The Galveston County Health District (the "district") received a request for information relating to a named individual and "The Momma Cat." You inform us that the district has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that some of the information at issue is subject to section 552.022 of the Government Code. Section 552.022 provides that

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). You indicate that the highlighted information in Exhibits 1 and 2 is part of a completed investigation made of, for, or by a governmental body. Therefore, the district must release that information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. The district

seeks to withhold the highlighted information in Exhibits 1 and 2 under the informer's privilege. Texas courts have long recognized the common-law informer's privilege, as incorporated into chapter 552 of the Government Code by section 552.101.<sup>1</sup> *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 Roviario v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege under *Roviario* exists, however, to protect a governmental body's interest. Thus, the informer's privilege under *Roviario* 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 district may not withhold any of the highlighted information in Exhibits 1 or 2 under the common-law informer's privilege.

The informer's privilege also is found, however, 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." *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information relating to the completed investigation for which you claim the informer's privilege is confidential under rule 508.

Texas Rule of Evidence 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.

TEX. R. EVID. 508(a)-(b). 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 information in Exhibits 1 and 2 for which the district claims the informer's privilege relates to complaints of potential violations of the district's rules for animal control. You do not inform us, however, and it is not otherwise clear to this office that any of the

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<sup>1</sup>Section 552.101 of the Government Code exempts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

information at issue relates to an individual who furnished information to a “law enforcement officer” for purposes of Texas Rule of Evidence 508. We therefore conclude that the district may not withhold any of the highlighted information in Exhibits 1 or 2 under rule 508.

Next, we address your claim under the common-law informer’s privilege with regard to the highlighted information in Exhibit 14. The common-law informer’s privilege 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. *See* Open Records Decision Nos. 515 at 3 (1998), 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.” *See* 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 privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that the highlighted information in Exhibit 14 relates to a complaint of potential violations of the district’s animal control rules, the Texas Health and Safety Code, and the Texas Penal Code. Based on your representations and our review of the information at issue, we conclude that the district may withhold the highlighted information in Exhibit 14 under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Lastly, we note that the submitted documents also contain an account number that is confidential under section 552.136 of the Government Code. Section 552.136 provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked a bank account number in Exhibit 33 that is excepted from disclosure under section 552.136.

In summary, the highlighted information in Exhibit 14 is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The marked bank account number in Exhibit 33 is excepted from disclosure under section 552.136. The rest of the information that the district seeks to withhold is not excepted from disclosure and 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).

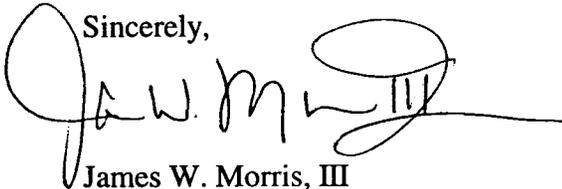
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 185891

Enc: Submitted documents

c: Ms. Wendy Grossman  
Houston Press  
1621 Milam, Suite 100  
Houston, Texas 77002  
(w/o enclosures)