



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2003

Mr. Jeffrey L. Moore
Brown & Hofmeister
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2003-7529

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189757.

The City of Highland Village (the "city") received a written request for certain statistical information regarding dog bites to humans from January 1, 1993 to January 1, 2003. Because the information you submitted to this office as responsive to the request does not consist of statistical information, we assume the city in fact does not possess the requested statistical information, and that the city intends for the requestor to compile the statistical information from the types of documents you submitted to this office.¹ You contend that portions of the representative sample of documents you submitted to this office are excepted from required public disclosure pursuant to sections 552.101 and 552.130 of the Government Code.²

We note that the submitted information includes information that is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government

¹If such is not the case, the city must release the requested statistical information, to the extent it exists at this time. *See* Gov't Code §§ 552.301, .302.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code unless they are expressly confidential under other law. Some of the information that you submitted to us for review appears to consist of completed reports or investigations, which fall into one of the categories of information made expressly public by section 552.022. Gov't Code section 522.022(a)(1). Section 552.022(a)(1) provides that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is confidential by law.³ Because you contend that portions of the submitted documents are excepted from required public disclosure under section 552.101 of the Government Code, we will address this claim.⁴

You contend that the "complainant" information contained in the documents at issue is protected from disclosure pursuant to the common-law informer's privilege as incorporated into section 552.101. The common-law informer's privilege, incorporated into 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); *see also Roviario v. United States*, 353 U.S. 53, 59 (1957). The common-law informer's privilege under *Roviario* exists to protect a governmental body's interest. Therefore, the common-law informer's privilege under *Roviario* 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 reports 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 seek to withhold pursuant to the informer's privilege 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.

³We note that you do not raise section 552.108 in this instance.

⁴Section 552.101 of the Government Code protects "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 information for which you claim the informer's privilege relates to "reports . . . made to the Animal Control Division of the City's Code Enforcement Department – the department with the responsibility for enforcing" the city ordinance governing the procedures for reporting dog bites. Although you further state that criminal penalties may result from offenses including "public safety regarding dangerous dogs," you do not inform us, and it is not otherwise clear to this office, that any of the "complainant" 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 city may not withhold any of the "complainant" information in the submitted records pursuant to rule 508. Consequently, this information must be released to the requestor.

You next contend that portions of the submitted records that constitute rabies vaccination certificates are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. Section 826.0211 provides in pertinent part that "[i]nformation that is contained in a rabies vaccination certificate that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code." Health & Safety Code § 826.0211(a). The only exception to this confidentiality is that the information may be disclosed "to a governmental entity for purposes related to the protection of public health and safety." Health & Safety Code § 826.0211(b). In this instance, the requestor is not a governmental entity, and therefore, section 826.0211(b) is inapplicable. Therefore, the city must withhold the identifying information in the vaccination certificates that you have marked pursuant to section 552.101 of the Government Code in conjunction with section 826.0211(a) of the Health and Safety Code.

Finally, section 552.130(a)(1) of the Government Code requires the city to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of *this state*." (Emphasis added.) Accordingly, the city must withhold all Texas driver's license numbers pursuant to section 552.130(a)(1) of the Government Code.

In summary, the city must withhold 1) the marked identifying information contained in the rabies vaccination certificates pursuant to section 552.101 and 2) all Texas drivers' license numbers. The remaining submitted 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 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 that reads "Jennifer E. Berry". The signature is written in a cursive style with a large initial "J" and "B".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 189757

Enc: Submitted documents

c: Ms. Karen Cole
1304 RR 620 North
Austin, Texas 78734
(w/o enclosures)