



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2004

Ms. Sara Hartin
Assistant City Attorney/Prosecutor
City of Killeen
101 N. College
Killeen, Texas 76541

OR2004-7276

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206979.

The City of Killeen (the "city") received a request for report number 14 pertaining to an attack by two dogs, inclusive of all quarantine records relating to all incidents involving the two dogs at issue. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation showing, that the information in Exhibit C which you have highlighted in yellow relates to criminal prosecutions pending in the Killeen Municipal Court. You also indicate that the city attorney's office is prosecuting these cases. Based upon these representations, we conclude that the release of the information in Exhibit C which you have highlighted in yellow would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, however, that information normally found on the front page of an arrest or offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report, inclusive of “a detailed description of the offense in question.” *Id.* The information you have released does not include a detailed description of the offense. Therefore, in addition to the information already released, the city must release a detailed description of the offense in question.¹ Although section 552.108(a)(1) authorizes you to withhold the remaining information highlighted in yellow within Exhibit C from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.² *See* Gov't Code § 552.007.

We note that the Exhibits D and E consist of completed investigations and are therefore expressly public under section 552.022(a)(1) of the Government Code, which 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). Therefore, the city may withhold Exhibits D and E only if they are made confidential under other law or are excepted by section 552.108 of the Government Code.

You claim that the identities of informers within Exhibits D and E are protected from disclosure under the informer's privilege as incorporated into section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential

¹ Generally, basic information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

² Because we reach this determination under section 552.108, we need not reach your section 552.103 argument against disclosure of the information highlighted in yellow in Exhibit C.

by law, either constitutional, statutory, or by judicial decision.” The informer’s privilege 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 informer’s privilege under *Roviario* exists to protect a governmental body’s interest. Therefore, the 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).

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). Thus, we will determine whether the informers’ identities are protected 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 protected 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 conducting an investigation, and the information does not fall within an exception to the privilege enumerated in Rule 508(c). You state that alleged violations of the city’s Code of Ordinances were reported to the City’s Animal Control Department, which has criminal law-enforcement authority over violations of the City’s Animal Ordinance. You inform us that such a violation can result in a class “C” misdemeanor charge punishable by fine. However, you do not inform us, and it is not otherwise clear to this office, that the individuals to whom the alleged violations were reported are “law enforcement officers” for purposes of Rule 508. Thus, the identities of informers within Exhibits D and E are not confidential under Rule 508, and the city must release this information to the requestor.

You also claim that some of the remaining submitted information is confidential under section 552.130 of the Government Code, which provides, in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must also withhold under section 552.130 the Texas driver's license numbers in Exhibits C, D and E which you have highlighted in pink.

In summary, the city must release a detailed description of the offense but may withhold the remaining information highlighted in yellow in Exhibit C under section 552.108(a)(1). The city must withhold under section 552.130 the information highlighted in pink in Exhibits C, D and E. The remaining information 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).

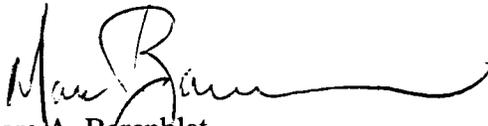
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 206979

Encl: Submitted documents

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(w/o enclosures)