



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2005

Ms. Terri Bradley  
Records Division  
Rosenberg Police Department  
2120 Fourth Street  
Rosenberg, Texas 77471

OR2005-08324

Dear Ms. Bradley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 232171.

The Rosenberg Police Department (the "department") received a request for "citizens complaint on officer of the [department]" for a certain time period. You claim that 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.

Initially, we note that you claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. However, although you raise section 552.108, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we conclude that you have waived this exception. See Gov't Code §§ 552.301, .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common-law informer's privilege, incorporated into the Act by 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). This 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). It 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.” 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 an informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You have provided this office with an explanation of what each complaint is alleging. We are able to determine that most of these complaints allege violations of law that carry civil or criminal penalties. We are also able to determine that these complaints were made to the department. As previously stated, however, the informer’s privilege is not applicable when the subject of the complaint knows the identity of the informant. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). If during the course of the department’s internal investigation, the officer who was the subject of the complaint was advised of the identity of the complainant or was given sufficient information to determine the identity of the complainant, the informer’s privilege would not be applicable. You have not advised our office of the facts surrounding the submitted complaints or the subsequent internal investigations stemming from those complaints, therefore we are forced to rule conditionally. Thus, for those complaints which allege violations of law that carry civil or criminal penalties, we conclude that the common-law informer’s privilege is applicable *if* the officer who is the subject of the complaint does not know the identity of the complainant. We have marked the information in these complaints, including the complainants’ names, addresses, phone numbers, and signatures, that may be withheld pursuant to section 552.101 of the Government Code if the common-law informer’s privilege is applicable. However, if the officer who is the subject of the complaint does know the identity of the complainant, the informer’s privilege is inapplicable and the information we have marked may not be withheld on that basis.

We conclude that the informer’s privilege is inapplicable to the remaining complaints because either we are unable to determine whether these complaints allege violations of law that carry civil or criminal penalties, or you have not otherwise explained why the informer’s privilege is applicable to them. Therefore, none of the information in the remaining complaints may be withheld under the informer’s privilege.

In summary, the department may only withhold the information we have marked under section 552.101 of the Government Code if the informer’s privilege is applicable. If the informer’s privilege is not applicable to those complaints, then the submitted information must be released in its entirety.

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).

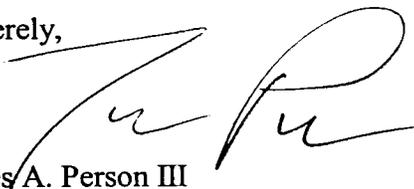
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

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Enc. Submitted documents

c: Mr. Amen Omo Obadagronyi  
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(w/o enclosures)