



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2007

Mr. Mark K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2007-06993

Dear Mr. Risley:

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# 280285.

The Victoria Police Department (the "department") received a request for information pertaining to a named individual from 2000 to 2007. You claim that 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 exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes completed reports that are subject to section 552.022(a)(1) of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Sections 552.101 and 552.130 constitute other law for purposes of section 552.022. The Texas Supreme Court has held that the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022 of the Government Code. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore also consider your arguments under sections 552.101 and 552.130 of the Government Code and rule 508 of the Texas Rules of Evidence for these reports.

We next note that offense report 2007-00007505 contains documents filed with the court. A document that has been filed with a court is expressly public under section 552.022(a)(17) of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). You assert that this information is excepted under sections 552.103 and 552.108 of the Government Code; however, sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived by the governmental body. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, sections 552.103 and 552.108 do not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the court-filed documents under section 552.103 or 552.108, but instead must release them to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In addition, a compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that the submitted information does not consist of criminal history information of the individual at issue.

In Open Records Decision No. 169 (1977), this office also recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy on a showing of "special circumstances." *See* Open

Records Decision No. 123 (1976). In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* at 6.

You explain that the defendant in the submitted offense reports is a member of a prison gang and that there are “numerous instances in which the defendant has threatened witnesses and potential witnesses with violence, displayed handguns in front of them, and informed them that they will be assassinated.” After review of your arguments and the submitted information, we find you have established that some of the submitted information is confidential under common-law privacy in conjunction with special circumstances; therefore, the department must withhold this information under section 552.101 in conjunction with common-law privacy and special circumstances. We have marked other information that the department must also withhold under section 552.101 in conjunction with common-law privacy. However, we find the department has not established the presence of special circumstances sufficient to justify the withholding of any of the remaining information. The remaining information is also not highly intimate or embarrassing. Accordingly, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses the informer’s privilege, which has long been recognized by Texas courts. *E.g.*, *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). The 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. Open Records Decision No. 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.” Open Records Decision No. 279 at 2 (1981). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege. Additionally, the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

You assert that the names of witnesses and informants in the offense reports subject to section 552.022, as all as those in the remaining offense reports, are excepted under the

informer's privilege. We note that the witnesses who provided information in the course of the investigations are not informants for purpose of the informer's privilege. Further, the subject of the complaints knows the identities of the complainants in these reports. After review of your arguments, we conclude you have failed to establish the applicability of the informer's privilege, and the department may not withhold any of the submitted information under section 552.101 of the Government Code on that ground.

You assert that some of the remaining information subject to section 552.022 is privileged under rule 508 of the Texas Rules of Evidence, which provides in relevant part the following:

(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). After review of your arguments, we find you have failed to establish that the rule 508 informer's privilege applies to the remaining information subject to section 552.022, and none of it may be withheld on that basis.

You assert that some of the information in the offense reports that are not subject to section 552.022 is also excepted under section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 508. We note, however, that section 552.101 does not encompass the Texas Rules of Evidence. See Open Records Decision No. 676 at 2 ("We find no authority to support a conclusion that the Texas Rules of Civil Procedure or the Texas Rules of Evidence are constitutional law, statutory law, or judicial decisions so as to fall within section 552.101's purview"). Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with rule 508 of the Texas Rules of Evidence.

You assert that some of the remaining information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection,

investigation, or prosecution of crime.” 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that offense reports 2006-00050638, 2006-000506402, 2007-00007505, and 2007-000007570 pertain to pending prosecutions. Based on this representation, we conclude that the release of this information 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information in offense reports 2006-00050638, 2006-000506402, 2007-00007505, and 2007-000007570 under section 552.108(a)(1).

This office has also previously determined that, when it can be established from an examination of the facts of a particular case that disclosure of witness identities and statements might subject the witnesses to possible intimidation or harassment, that information may be excepted from disclosure under the predecessor to section 552.108. Open Records Nos. 329 (1982), 313 (1982), 297 (1981), 252 (1980). However, after review of your arguments and the information at issue, we find that the department has not established that release of the remaining information would subject any individual to possible intimidation or harassment; therefore, the department may not withhold any of the remaining information under section 552.108.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.

To conclude, the department must release the court-filed documents marked under section 552.022(a)(17) of the Government Code. The department must withhold the information marked under sections 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. With the exception of basic information, the department may withhold the remaining information in offense reports 2006-00050638, 2006-000506402, 2007-00007505, and 2007-000007570 under section 552.108 of the Government Code. The department must release the remaining

information.¹ As our ruling is dispositive, we do not address your other arguments for exception of the submitted information.

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).

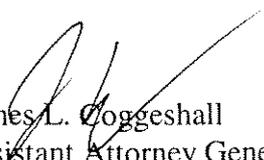
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

¹We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jb

Ref: ID# 280285

Enc. Submitted documents

c: Mr. John Mays
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(w/o enclosures)