



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2008

Mr. Christopher Gregg
City Attorney
City of League City
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2008-15112

Dear Mr. Gregg:

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# 326760.

The City of League City (the "city"), which you represent, received a request for all calls to animal control and the police involving a specified address and surrounding areas during a certain time period, as well as the outcomes of citations issued during that same period. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information made confidential by other statutes. Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to delinquent conduct or conduct in need of supervision that occurred on or after September 1, 1997. For purposes of section 58.007, a "child" is defined as a person ten years of age or older and under seventeen years of age. Fam. Code § 51.02(2)(A). The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Id. § 58.00(c). The reports numbered 2006-056679, 2007-043862, and 2008-038619 are law enforcement records of identified juveniles engaged in conduct that you inform us is a class C misdemeanor. Based on your representations and our review, we find that these reports pertain to juvenile conduct indicating a need for supervision. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” for the purposes of section 58.007). It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the reports numbered 2006-056679, 2007-043862, and 2008-038619 are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101.¹

Section 552.101 also encompasses the common-law informer’s privilege, which 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). 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 Nos. 515 at 3 (1988), 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). 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). However, the informer’s privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You state that the remaining reports should be withheld in their entirety pursuant to the common-law informer’s privilege. In some circumstances, for example, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire statement to protect the informant’s identity. Open Records

¹As our ruling is dispositive, we need not address your remaining argument against release of this information.

Decision No. 434 at 2 (1986). However, in this instance, the complainants' identifying information is easily separable in the written reports. Accordingly, the reports may not be withheld in their entirety under the informer's privilege. However, we will review the submitted documents to determine whether the city has demonstrated that the complainants' identifying information may be withheld under the informer's privilege. After considering your arguments and reviewing the documents, we find that the information we have marked reveals the identities of individuals who reported violations that you indicate are class C misdemeanors. Accordingly, this marked information may be withheld under the informer's privilege. As for the remaining documents, however, most do not on their face show a report of a violation. Furthermore, you do not explain how these documents contain a report of any violation. *See* Gov't Code § 552.301 (e)(1)(A) (providing that governmental body must provide sufficient arguments to establish applicability of claimed exceptions). To the extent that these documents do contain a report of a violation, it is apparent that the subjects of these reports know the identity of the informers who made the reports. Therefore, the city has failed to demonstrate the applicability of the informer's privilege to the remaining documents.

You also claim that some of the submitted information is excepted under section 552.108 of the Government Code. Section 552.108 excepts from disclosure information concerning an investigation or prosecution that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108 must demonstrate that the requested information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. You have submitted a document which lists multiple cases. However, you have not identified which cases ended in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must label documents to indicate which exceptions apply to which parts of the documents). Accordingly, the city has failed to demonstrate that section 552.108 is applicable to any of the submitted information.

In summary, the city must withhold report numbers 2006-056679, 2007-043862, and 2008-038619 under section 552.101 in conjunction with section 58.007 of the Family Code. The city may withhold the identifying information we have marked under section 552.101 in conjunction with the common-law informer's privilege. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 326760

Enc. Submitted documents

c: Ms. Marjorie Sikes
204 Willow creek Court
League City, Texas 77573
(w/o enclosures)