



April 5, 2000

Ms. Sarah H. Blackburn
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-1297

Dear Ms. Blackburn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133696.

The City of Midland (the "city") received a request for information relating to twelve case numbers. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code, as well as under the informer's privilege in conjunction with section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. To establish the applicability of section 552.108(a)(2), a governmental body must demonstrate that the requested information relates to a criminal investigation that has *concluded in a final result* other than a conviction or deferred adjudication. In the absence of such a demonstration, it is not excepted from public disclosure under section 552.108. In raising section 552.108(a)(2), you state only that the requested records are "information [that] deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication." We find that such a general contention is not sufficient; you must specifically demonstrate that section 552.108(a)(2) is applicable. Therefore, we conclude that requested information is not protected under this section.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It 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 does not categorically protect from release basic information considered public by *Houston Chronicle*. The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976). Based upon the information provided to this office, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to the identity of the complainant. Such information may not be withheld under the informer's privilege.

Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, we agree that you must withhold the driver's license numbers that you have marked in the submitted records. We note, however, that we have marked additional information in the submitted documents that you must withhold pursuant to section 552.130.

In addition, the social security numbers contained in your records may be confidential if they were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii); *see* Open Records Decision No. 622 (1994). Section 552.352 of the Government Code provides criminal penalties for the release of information considered confidential under chapter 552. Therefore, prior to releasing the social security numbers we have marked, the city should ensure that the numbers were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. In summary, except for the information we have marked as confidential pursuant to section 552.130 and the social security numbers as noted above, we find that the requested 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 133696

Encl. Submitted documents

cc: Ms. Margie L. Walters
P.O. Box 9054
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(w/o enclosures)