



June 2, 2000

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-2000

OR2000-2157

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135981.

The City of Garland (the "city") received a request for a specified offense report. You assert that you have released most of this report but seek to withhold a portion which you claim is excepted from disclosure under the "informer's privilege" protection of section 552.101 of the Government Code. You have supplied the responsive information to this office for review. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Texas courts recognize the informer's privilege, *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), and it is a well-established exception under the Public Information Act. Open Records Decision No. 549 at 4 (1990). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the

obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The informer's privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. See Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). Also, since the informer's privilege serves to protect the flow of information to a governmental body and does not serve to protect a third person, this privilege, unlike other section 552.101 claims, may be waived by the governmental body. Open Records 549 (1990). Finally, as the identities of "complainants," are specifically made public, they are not protected under the informer's privilege. 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; Open Records Decision No. 127 (1976). You inform this office that the privilege is asserted in relation to the criminal offense of assault and that the identity you seek to protect is not that of the complainant in this case. You do not indicate that the identity of the subject individual is known to the accused in this case. Assuming that this identity is unknown, we conclude that the information that you have marked on the submitted materials may be withheld under the "informer's privilege" as protected by section 552.101 of the Government Code.

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. Galbraith*, 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 135981

Encl Submitted documents

cc: Robert Chism Sligar
1914 Glencrest Lane
Garland, Texas 75040
(w/o enclosures)