



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-875

Dear Ms. Calabrese:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 34333.

The City of Houston (the "city") received a request for every complaint made to the city about deed restriction violations.¹ You claim that the names, addresses, and telephone numbers of the individuals complaining about deed restriction violations are excepted from disclosure under the informer's privilege aspect of section 552.101. You also contend that all of these complaints, and the name of a city building inspector, are excepted from disclosure pursuant to section 552.103(a).

To show the applicability of section 552.103, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. This office makes that determination on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. However, since you did not supply any of the complaints at issue to this office to review, we are unable to determine the applicability of section

¹The requestor also asked for city ordinances and other authority that the city relies upon to enforce deed restrictions. It is our understanding that this information has already been released to the requestor.

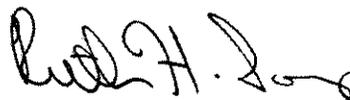
552.103(a) to the complaints. You also object to releasing the name of a city building inspector. We note, though, that the names of public employees are generally public information. Gov't Code § 552.022(2) (names of employees and public officers); *see also A & T Consultants, Inc. v. Sharp*, 39 Tex. Sup. Ct. J. 1071 (July 21, 1995) (balancing section 552.022 and Tax Code provisions).

However, based on the information you provided, we agree that the city may redact the names, addresses, and telephone numbers of complainants prior to releasing information to the requestor. The informer's privilege protects the identity of a person who reports a violation or possible violation of law to officials charged with the duty of enforcing the particular law. *See* Open Records Decision Nos. 515 (1988), 191 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988) at 3, 391 (1983) at 3. This privilege is actually a governmental entity's privilege to withhold from disclosure the identity of those persons who report violations of law. It recognizes the duty of citizens to report violations of law and, by preserving their anonymity, encourages them to perform that duty. *Roviaro v. United States*, 353 U.S. 53, 59 (1957).

This office has held that the informer's privilege also applies when the informer reports 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. 515 (1988) at 2. You submitted information to this office indicating that the city attorney is authorized to file or become a party to a lawsuit to enforce a deed restriction. Section 10-552(a) of Houston's Code of Ordinances provides that an owner who is in violation of a deed restriction "shall be subject to civil penalties of not more than \$1,000.00 per day" We note, however, that the city may not protect the identity of complainants if their identities are already known to the individuals who would have cause to resent the complaints. *See* Open Records Decision No. 202 (1978) at 2.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 34333

Enclosures: Submitted documents

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(w/o enclosures)