



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Mr. John A. Riley
Director, Litigation Support Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-1169

Dear Mr. Riley:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0730 (1998). Your request for reconsideration was assigned ID# 115950.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information concerning the alleged falsification of a specified individual's application for waterworks personnel certification. In Open Records Letter No. 98-0730 (1998), this office concluded that the commission could not withhold certain information under the informer's privilege. In your request for reconsideration, you reassert your arguments that the identity of the person making the complaint may be withheld under the informer's privilege aspect of section 552.101 of the Government Code.

We have reviewed your original arguments for withholding the information. You indicate that the report here involves a possible violation of the commission's rules in the Texas Administrative Code. "[M]isrepresentation or falsification of information by the applicant shall be grounds for rejection of an application." See 30 T.A.C. § 290.31(a). You also cite to sections 341.031 and 341.034 of the Health and Safety Code. As we noted in Open Records Letter No. 98-0730 (1998), however, the informer's privilege protects the identities of individuals who report violations of statutes with civil or criminal penalties. See *Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 2-5*. We do not believe that the informer's privilege is applicable in this instance because the report is an alleged violation of a commission rule with no apparent civil or criminal penalties other than rejection of an application. Although you argue that the alleged falsification of an application violates sections 341.031 and 341.034 of the Health and Safety Code, you have not shown how such

a violation may result in a civil or criminal penalty. As a governmental body must explain the reasons why the stated exceptions apply within fifteen days of receiving the request, we are unable to address any additional briefing from the commission on this matter. *See* Gov't Code § 552.301. We, therefore, affirm Open Records Letter No. 98-0730 (1998).

If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 115950

Enclosures: Submitted documents

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