



September 13, 1999

Ms. Kimberley Mickelson
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR99-2541

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128142.

The City of Friendswood (the “city”), which you represent, received a request for the name of a specific complainant. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer’s privilege. We note that the city received the request for information on July 8, 1999, and transmitted its request for opinion to this office of July 23, 1999. Thus, the city failed to submit its request within the ten business day limit imposed by section 552.301 of the Government Code. This failure to timely request a decision results in the legal presumption that the requested information is open to the public. Gov’t Code §552.302. The presumption arising with the ten-day rule can be overcome only by a compelling demonstration that the information should not be released, *e.g.*, where it is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977).

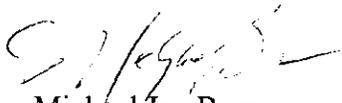
The informer’s privilege facet of section 552.101 of the Government Code serves to protect the flow of information to a governmental body and does not serve to protect a third person. This privilege, unlike other section 552.101 claims, may be waived by the governmental body. Open Records Decision No. 549 (1990). The requested information may therefore not be withheld by application of this privilege.

You indicate that the individual whose identity is at issue has expressed a fear of retaliation. This office has recognized that the release of personal information under “special

circumstances" can constitute "a clearly unwarranted invasion of personal privacy," prohibited by the Public Information Act. Open Records Decision No. 123 (1976). An imminent threat of physical danger, as opposed to a generalized and speculative fear of harassment or retribution, is one such "special circumstance." Open Records Decision No. 169 (1977). A determination of "special circumstances" can only be made on a case-by-case basis, with the initial determination made by the governing body. *Id.* at 7. In this case, you have provided no information which supports an exception to disclosure. We note, however, that the interest of third parties, such as those of the individual whose identity is at issue, are not waived by a governmental body's failure to timely request an opinion. Open Record Decision No. 150 (1977). Therefore, unless you provide us information that establishes that release of the subject individual's identity would place that individual in imminent threat of physical danger, or that would otherwise establish "special circumstances" as herein discussed, the identifying information must be released

We note that the request is limited to the name of the complainant. All other information is therefore not responsive to this request and need not be released. 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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ljp

Ref: ID# 128142

Encl. Submitted documents

cc: Ms. Canelia E. Layton
2218 North Mission Circle
Friendswood, Texas 77546
(w/o enclosures)