



September 28, 1999

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-2732

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128955.

The City of Houston (the "city") received a request for records regarding deed restriction enforcement in the community of Meadowbrook. While you have made some of the responsive records available to the requestor, you claim that the remainder of the records is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code. We have considered your arguments and have reviewed the representative sample of documents submitted.

Pursuant to section 552.111 of the Government Code, a governmental body may withhold attorney work product from disclosure if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 at 4 (1996). The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories.

If a requestor seeks an attorney's entire litigation file, and a governmental body seeks to withhold the entire file and demonstrates that the file was created in anticipation of litigation,

we will presume that the entire file is excepted from disclosure under the attorney work product aspect of section 552.111. Open Records Decision No. 647 at 5 (1996) (organization of attorney's litigation file necessarily reflects attorney's thought processes) (citing *National Union Fire Ins. Co. v Valdez*, 863 S.W.2d 458, 461 (Tex. 1993)). We note that the documents you wish to withhold are responsive to the request for all case files assembled for the purpose of deed restrictions in the Meadowbrook community from January 1996 to January 1999. Furthermore, you have satisfied the first prong of the work product test by demonstrating that the case files were created in anticipation of litigation concerning deed restrictions in Meadowbrook community. Therefore, we conclude that the city may withhold the litigation files from disclosure under section 552.111 of the Government Code.¹

In addition to a representative sample of litigation files, you have also submitted a representative sample of deed restriction complaint forms. You argue that the names, addresses, and telephone numbers of complainants of deed restriction violations contained in these forms should be withheld under the informer's privilege as encompassed by section 552.101 of the Government Code.²

The "informer's privilege," incorporated into the Public Information Act by section 552.101,³ has long been recognized by Texas courts. *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). 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 protects the identities of individuals who report violations of statutes to the police or similar law enforcement agencies, as well as those who report 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. 279 at 2 (1981) (citing Wigmore, *Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). You explain that the complainants are reporting deed restriction violations to the city, which has the authority to enforce the restrictions and to impose civil penalties for violations. Having reviewed the submitted complaint form, we agree that the

¹Because section 552.111 is dispositive in regard to the submitted litigation files, we need not address your argument regarding section 552.103.

²Due to this discrete argument, and because the sample complaint form was submitted in a separate exhibit from the sample litigation files, we assume that the complaint forms are not part of the litigation files, and therefore do not fall under section 552.111.

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

highlighted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 128955

Encl: Submitted documents

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