



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 12, 2003

Ms. Leigh Sebastian
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2003-4059

Dear Ms. Sebastian:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182766.

The Lower Colorado River Authority (the "LCRA") received a request for the names of the individuals who alleged that a specific marina was polluting a lake. 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 have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure information that is confidential by law. This office interprets this exception as incorporating the "informer's privilege." See Open Records Decision No. 515 (1988) (citing *Roviaro v. United States*, 353 U.S. 53 (1957)). The Texas courts have also recognized the informer's privilege. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege aspect of section 552.101 protects the identity of a person who reports a violation or possible violation of the law to officials charged with the duty of enforcing the particular law. The privilege protects individuals who report violations to administrative agencies having a duty to enforce statutes with civil or criminal penalties. See Open Records Decision No. 515 at 2 (1988). The informer's privilege does not apply if the subject of the information already knows the informer's identity. Open Records Decision No. 208 at 1-2 (1978).

You explain that the LCRA is responsible for investigating unauthorized discharges into Lake Travis. You further explain that, as part of this authority, the LCRA has adopted the Lake Travis Nonpoint Source Pollution Control Ordinance (the "ordinance") which makes it unlawful for any land user to undertake any development on his property without first obtaining a valid pollution control permit from the LCRA. A violation of the ordinance will result in fine of \$10,000. You state that you seek to withhold the identifying information of individuals who provided the LCRA with information regarding alleged violations of the ordinance. Based on your arguments and our review of the submitted records, we have marked the information that identifies informers and may, therefore, be withheld under section 552.101 in conjunction with the informer's privilege. *See* Open Records Decision No. 156 (1977) (concluding that identifying information of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). We note, however, that the LCRA seeks to withhold the identity of a peace officer under the informer's privilege. A peace officer has a duty to report violations of laws. Consequently, the peace officer may not avail himself of the informer's privilege in this type of situation. Thus, the peace officer's identity and the remaining, un-marked information must be released.

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,

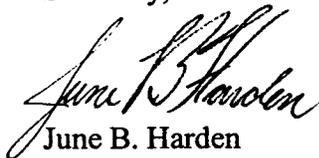
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 182766

Enc: Submitted documents

c: Ms. Linda M. Langston
President
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(w/o enclosures)